

The University of Southern Mississippi

## The Aquila Digital Community

---

### Master's Theses

---

Fall 12-2011

# A Content Analysis of Statutory Grounds for Involuntary Termination of Parental Rights: The Impacts and Susceptibility of Incarcerated Mothers and Their Children

Holly Marie Duke

*University of Southern Mississippi*

Follow this and additional works at: [https://aquila.usm.edu/masters\\_theses](https://aquila.usm.edu/masters_theses)



Part of the [Criminology Commons](#), [Criminology and Criminal Justice Commons](#), [Other Legal Studies Commons](#), [Other Sociology Commons](#), and the [Social Work Commons](#)

---

### Recommended Citation

Duke, Holly Marie, "A Content Analysis of Statutory Grounds for Involuntary Termination of Parental Rights: The Impacts and Susceptibility of Incarcerated Mothers and Their Children" (2011). *Master's Theses*. 239.

[https://aquila.usm.edu/masters\\_theses/239](https://aquila.usm.edu/masters_theses/239)

This Masters Thesis is brought to you for free and open access by The Aquila Digital Community. It has been accepted for inclusion in Master's Theses by an authorized administrator of The Aquila Digital Community. For more information, please contact [Joshua.Cromwell@usm.edu](mailto:Joshua.Cromwell@usm.edu).

The University of Southern Mississippi

A CONTENT ANALYSIS OF STATUTORY GROUNDS FOR INVOLUNTARY  
TERMINATION OF PARENTAL RIGHTS: THE IMPACTS AND SUSCEPTIBILITY  
OF INCARCERATED MOTHERS AND THEIR CHILDREN

by

Holly Marie Duke

A Thesis  
Submitted to the Graduate School  
of The University of Southern Mississippi  
in Partial Fulfillment of the Requirements  
for the Degree of Master of Arts

Approved:

Lisa S. Nored  
Director

W. Wes Johnson

Hayden Griffin

Susan A. Siltanen  
Dean of the Graduate School

December 2011

## ABSTRACT

As the myriad of complex circumstances surrounding incarceration and foster care debilitate the parent-child relationship, the likelihood of legal severance between an incarcerated parent and their child increases. Despite the nation's mounting prison population over the last three decades, the growing interaction between the prison and foster care populations has received minimal attention in the literature. To date, the influence of the statutory grounds for involuntary termination of parental rights on the legal severance between incarcerated parents and their children has been largely ignored. The purpose of this research is to determine the susceptibility of incarcerated parents to the involuntary termination of parental rights by examining the impact of the statutory grounds based on the legislation of circumstances impeded by incarceration. Using content analysis, this study is designed to examine existing legislation to answer whether statutory grounds for involuntary termination of parental rights have an undue impact on incarcerated parents and their children as a result of the restrictions inherent in incarceration.

## TABLE OF CONTENTS

|  |     |
|--|-----|
| ABSTRACT .....   | ii  |
| LIST OF TABLES .....                                     | iv  |
| CHAPTER  |     |
| I. INTRODUCTION .....                                    | 1   |
| II. LITERATURE REVIEW .....                              | 10  |
| Termination of Parental Rights                           |     |
| The Impact of Mass Incarceration                         |     |
| Federal Legislation                                      |     |
| Obstacles for Incarcerated Parents and Their Children    |     |
| State Statutes   |     |
| III. METHODOLOGY .....                                   | 51  |
| Introduction   |     |
| Qualitative Content Analysis                             |     |
| Data Analysis Techniques                                 |     |
| Data Analysis Procedures                                 |     |
| IV. RESULTS .....  | 65  |
| Introduction   |     |
| Judicial Discretion                                      |     |
| Longevity of Time Sensitive Conditions                   |     |
| Requisite Criteria                                       |     |
| Legislation of Incarceration                             |     |
| Construct: “May” or “Shall” as the Basis for Termination |     |
| Construct: Exceptions to the Statutory Grounds           |     |
| State and National Level Impact                          |     |
| V. DISCUSSION AND CONCLUSION.....                        | 135 |
| Discussion of Results                                    |     |
| Progressive Efforts                                      |     |
| Recommendations and Conclusion                           |     |
| REFERENCES .....   | 147 |

## LIST OF TABLES

### Table

|    |  |     |
|----|--|-----|
| 1. | Themes and Dimensions .....  | 66  |
| 2. | Judicial Discretion Dimensions in Statutory Grounds by State.....                        | 71  |
| 3. | Longevity of Time Sensitive Conditions Dimensions in Statutory<br>Grounds by State.....  | 80  |
| 4. | Requisite Criteria Dimensions in Statutory Grounds by State.....                         | 90  |
| 5. | Legislation of Incarceration Dimensions in Statutory Grounds<br>by State.....            | 106 |
| 6. | National Level Impact: Themes Evidenced in Statutory Grounds by<br>State.....            | 128 |
| 7. | State Level Impact: Dimensions by Theme Evidenced in<br>Statutory Grounds by State ..... | 131 |

## CHAPTER I

### INTRODUCTION

Beyond the legal and social implications and condemnation of American society, the arrest and conviction of a parent does not negate his or her paternal rights, responsibilities, or instincts. Although it is difficult for society to overlook the breach of civil norms, the inability to provide for financial support, and the behaviors of a bad role model, a parent is still a parent and entitled to his or her constitutional right as a parent until proven otherwise based on what is known as clear and convincing evidence. Despite incarceration, parents continue to hold a critical place in their children's lives. In *Santosky v. Kramer* (1982), the United States Supreme Court held that the burden of proof in termination of parental rights proceedings should be above that required in other civil proceedings. Justice Blackman stated "the fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state" (p. 753). The relinquishment of parental rights cannot be an assumption of parental incarceration (Beckerman, 1998; Hairston, 1991; Harding, 2001; Luke, 2002; Shanely, 2008).

The purpose of this research is to determine the susceptibility of incarcerated parents to involuntary termination of parental rights by examining the impact of statutory grounds. A content analysis of the state statutes' common criteria and conditions aims to answer whether the statutory grounds for involuntary termination of parental rights have an undue impact on incarcerated parents and their children.

Since the 1980s, incarceration rates in the United States have increased by 370%. The repercussions of this trend have become increasingly evident (Mears, 2010).

Characterized by declining release dates and long sentences, the current epidemic of imprisonment disrupts the positive, nurturing relationships between many parents, particularly mothers and their children (Bloom, 1995; Christian, 2009; Hagan, 2011; Hanlon, Carswell, & Rose, 2007; Nickel, Garland, & Kane, 2009). As Gentry (1991), notes, parental incarceration and the resulting family disturbance has become an escalating problem. Further, parental imprisonment has been found to have detrimental effects far beyond those recognized by society for both children and families including mental and emotional health, recidivism, and behavioral influences (Hayward & DePanilis, 2007; Johnson & Waldfogel, 2002; Johnston, 1995b; Myers, Smarsh, Amlund-Hagen, & Kennon, 1999).

Estimates have indicated that each year 1.5 million youth have parents who are incarcerated. The number of children with incarcerated parents has tripled within a ten year period (Hanlon et al., 2007; Mears, 2010; Mumola, 2000; Nickel et al., 2009; Seymour 1998). Approximately 25% of the children served by protective and welfare services are children of incarcerated parents. This dependent population has produced a parallel increase for both the child welfare system and foster care population (Hanlon et al., 2007; Hayward & DePanfilis, 2007; Seymour, 1998).

Although child welfare professionals, among others, have recognized an increased number of children of incarcerated parents, policy and legislation to address this issue has been slow to respond. In a survey of 500 child welfare, law enforcement, and correction professionals, Smith and Elstein (1994) found policies addressing the needs of children of incarcerated parents were lacking (Johnson & Waldfogel, 2002). While 80% of protective agencies have no specific policies or guidelines for dealing with the children upon parental arrest, a staggering 50% of child welfare agencies lack formal procedures for

case planning for this population (Johnson & Waldfogel, 2002; Seymour, 1998).

Although Swann and Sylvester (2006) found a direct association between incarceration and foster care, 97% of foster care agencies have no specific guidance when working with children of incarcerated parents (Seymour, 1998).

Multiple agencies provide support and services for incarcerated parents and their children. However, such efforts are rarely coordinated. Child welfare and criminal justice systems have historically functioned as distinct entities. That separation creates many challenges for incarcerated parents and their children due to the competing and often contradictory philosophies of those systems (Halperin & Harris, 2004; Mears, 2010; Nickel et al., 2009; Smith & Young, 2003). While the mission of the child welfare system is to preserve and protect the well-being of children and promote family stability and reunification, the disciplinary rhetoric of the criminal justice system emphasizes correction and security (Hagan, 2011). The unique circumstances of children of incarcerated parents embody the incongruities among the agencies which may be involved with these cases (Hagan, 2011; Nickel et al., 2009; Seymour, 1998; Smith & Young, 2003; Wien, 1997).

Research reveals the limited availability of data on the number of children with parents in prison (Beatty, 1997; Beckerman, 1998; Johnston, 1995a; Myers et al., 1999; Seymour, 1998). Many inmate mothers, for example, fail to disclose their total number or placement of their children because of embarrassment, the stigma associated with imprisonment, protection of those children living outside of state control or potential loss of parental rights (Gentry, 1998; Myers et al., 1999; Nickel et al., 2009; Snell, 1994; Seymour, 1998).



Methodological limitations also impede research on incarcerated parents and their children. Substantially reliant on self reporting, the strength of the data is vulnerable to the reporter's reluctance, omission, or exaggeration (Johnson & Waldfogel, 2002; Johnston, 2006; Moses, 2006; Myers et al., 1999; Seymour, 1998). Complicating the methodological flaws are the complexities of the prison atmosphere and inmates. A researcher's findings are likely challenged by the inability to distinguish between the effects of prison and the effects of other factors such as child dependency or maltreatment, parental substance abuse, mental illness, or trauma. Failing to account for such factors further impairs the collection or integrity of empirical evidence (Beckerman, 1998; Christian, 2009; Hairston, 2007).

The magnitude and impact of obstacles for parents, children and child welfare agencies, as a consequence of parental incarceration, are areas of uncertainty and growing concern (Johnson & Waldfogel, 2002; Johnston, 2006). Historically, the literature has primarily focused on children as victims of deliberate neglect and abuse without examination of the unique circumstances and perspectives of children with parents in prison. Further, literature addressing parental incarceration has either focused on the experience of incarcerated mothers or maternal deprivation.

Research pertaining to parental imprisonment and the child welfare system has not addressed the unforeseen effect of the prison boom, the contradicting philosophies of the criminal justice and child welfare systems, the legalities of both and the influence of all three factors on the needs of the children and parents (Dalley, 2002; Johnson & Waldfogel, 2002; Johnston, 2006; Seymour, 1998). Although Johnston (2006) notes recent interest in this vulnerable population, advocates, child welfare professionals, and

researchers continually strive to expose this “black box” of the child welfare system (Johnson & Waldfogel, 2002; Mears, 2010, p. 5; Seymour, 1998).

Gentry (1991) reviewed state statutes and case law examining the procedural due process rights of incarcerated parents, exclusively with children in foster care, in termination of parental rights proceedings. His analysis revealed that states had failed to adequately adjust to the escalating trend of incarcerated parents (Gentry, 1991). Since that time, changes in legislation coupled with the rise of mass incarceration have had a profound impact on termination of parental rights cases involving incarcerated parents and their children suggesting the need for a comprehensive examination of state termination of parental rights statutes.

Imprisonment impedes the conditions necessary for reunification for both the caseworker and mother. From the initial development of a permanency or case plan, to maintaining contact between parent and child or completing rehabilitation requirements, the confines, location and policies of correctional facilities, limit the ability of the parent to accomplish reunification requirements. The case plan delineates specific guidelines and requirements for visitation, contact, rehabilitative participation, court appearances and demonstrated behavior as evidence of maternal motivation and fitness. Solely dependent on communication with the caseworker, a mother’s reunification relies not only on the fulfillment of case plan requirements, but the caseworker’s facilitation of such requirements. Again, impeded by the constraints of imprisonment and the lack of communication, the expectations for successful visitation, review hearing attendance, and rehabilitation participation are stymied which deteriorates the potential for reunification. The caseworker’s diligence and quality of service, as well as the court’s determination of whether reasonable efforts were made, the potential for reunification,

the child's best interest, and parental fitness are the determining factors in a termination case. Every aspect of a permanency plan has potential to be defeated by the obstacles of parental incarceration.

Overcoming the obstacles of imprisonment has been limited by the enactment of the Adoption and Safe Families Act (ASFA) of 1997. Focused on reunification, the traditional timeline of permanency planning has been expedited to promote early termination of parental rights and adoption placements for children in out of home placement. Although allowing for exceptions, the ASFA generally prescribes guidelines which allow waiver of the so called reasonable efforts obligation, and allows termination of parental rights after foster care placement for 15 to 22 months negating accommodations for circumstances of parental incarceration (Christian, 2009; Crossley, 2003; Dicker, 2009; Gentry, 1998; Hort, 2001; Luke, 2002).

ASFA is statutorily defined, meaning the individual states determine the grounds for implementation and execution of the Act through state statutes. Due to numerous variations in individual guidelines, procedures, and protocols, the states' reasoning and dispositions will differ in these proceedings. While these statutes serve as the basis for judicial decisions in termination of parental rights proceedings, the states' progressive efforts in the enactment and revisions of child welfare legislation and policy or lack thereof plays a significant role in the well-being both parents and child.

There have been recent developments in state statutes since AFSA to address the incongruity of the act's goals and requirements with incarcerated parents and their children. In 2006, the National Conference of State Legislatures reported statutory amendments in four states to address the unique circumstances of imprisoned parents and their children. In California and Virginia, additional provisions required collaborative

efforts of law enforcement, correctional facilities, and child welfare agencies in the development and planning of services for children and an incarcerated parent. Further, Louisiana specified the requirements of case plans to be “reasonable” in cases involving an incarcerated parent. Having already legislated recognition of this unique population, Hawaii extended the Children of Incarcerated Parents Task Force through December 2007 (*Child Welfare*, 2007).

Although incarceration alone may not be grounds for termination of parental rights, states have identified a variety of factors that are encountered with incarceration, affecting the potential for reunification. Some of these factors include length of sentence, the mental, physical, and emotional effects of sustaining that relationship during incarceration, a lack of compliance by the parent to fulfill the case plan despite the child welfare agencies efforts, repeated incarceration, and the nature of the conviction. For incarcerated mothers, evidence of these factors, accompanied by paternal absence, constitute grounds for involuntary termination of parental rights. Acknowledging the vulnerability of an imprisoned parent to these statutory conditions and the potential for their parental rights to be terminated some states have minimized the judicial discretion in the decisions to terminate requiring the clear and convincing substantiation of one or more of these legal grounds (Christian, 2009; Nickel et al., 2009).

To date, research on termination of parental rights focuses primarily on adoption as the issue of concern examining either the issues of child welfare, the legal rights of the foster, adoptive, or biological parent, or the so called best interest of the child. Furthermore, since the 1980 Child Welfare Act and subsequent ASFA, there has been extensive research on the parameters and effects of federal legislation and state-level implementation on the foster care and adoption populations. Despite state and national

level focus on foster care and adoption, there is minimal research on the statutory grounds for involuntary termination of parental rights across all 50 states. This lack of research leaves a void of information on the current status and commonalities among the statutes and their impact from a national perspective. Through a national examination, this research addresses the status of the statutes impacting incarcerated parents.

The purpose of this research is to determine the susceptibility of incarcerated parents to the involuntary termination of parental rights by establishing the impact of the states' and the District of Columbia's statutory grounds. The impact is established through a content analysis of the grounds' common criteria and conditions which are impacted by imprisonment. This study aims to answer whether the statutory grounds for involuntary termination of parental rights have undue impact on incarcerated parents and their children.

Through an exhaustive review of the literature, three analytic categories were identified based on the restrictions due to incarceration and the obstacles faced by incarcerated parents: (a) time-sensitive conditions; (b) statutory language prone to judicial discretion in key conditions for termination; and (c) conditional requirements for reunification involving parental participation or overt demonstration of are taking ability and interest. The categories included consideration of the incarceration period, the mental, physical and emotional effects of sustaining that relationship during incarceration, the lack of compliance by the parent to fulfill the case plan despite the child welfare agencies efforts, the possibility of repeated incarceration, and the nature of the conviction, and exercising parental care and responsibility.

Through open-coding, a technique of content analysis, 16 common conditions and criteria, or dimensions, emerged from thorough review of the statutes' grounds. These

dimensions formed four categories or themes. Through an analysis of the statutes, the themes and dimensions existence and frequencies will determine the impact of the statutory grounds to establish the susceptibility of incarcerated parents to the termination of parental rights. Because children of incarcerated parents make up a growing portion of the foster care population, this research has the potential to identify statutory commonalities both detrimental and positive, and reveal inherent obstacles thus potentially directing the child welfare agencies to problematic areas for future training or policy revisions.

## CHAPTER II

### LITERATURE REVIEW

#### Termination of Parental Rights

Based on the notion that children have a right to a family and the experience of life, free from abuse and neglect when “reasonable efforts” have been exhausted and reunification is deemed unfeasible, the state may petition to terminate parental rights (Bogacki & Weiss, 2007; Dalley, 2002; Dicker & Gordon, 2000; Harding, 2001; Wien, 1997). These adversarial proceedings deliberate the legal severance of parental rights, nullifying the existence of the parent-child rights, relationship, privileges, and responsibilities based on a balance between the “best interest of the child” and the rights of the parents (*Black’s Law*, 2009). Considered a tool of last resort, termination of parental rights permanently and irrevocably dissolves a parent’s ability for the care, custody and management of their child (Bogacki & Weiss, 2007; Dalley, 2002; Dicker & Gordon, 2000; Harding, 2001; Leonard, 1983; Wien, 1997; Zubok, 2004).

Grounds for terminating parental rights are statutory and are defined and conditioned on either the inability of the parent to provide for the child’s basic needs or the apparent risk of harm under such parental control (Harding, 2001; U.S. Department of Health and Human Services, 2010). The severity and repercussions of interceding in the family are substantiated *only* when maintaining the family unit evidences potential harm to the child that is serious enough to overcome predictable harm resulting from emancipating the child’s parental ties (“Constitution and the family,” 1980; Wald, 1976). Recognizing the finality of terminating parental rights, in *Santosky v. Kramer* (1982), the United States Supreme Court (USSC) mandated a higher standard of proof from the traditional civil standard, which requires proof beyond a preponderance of the evidence

to the higher civil standard, which requires proof that rises to “clear and convincing evidence.” The Santosky Court further held that the right of a parent may not be severed based on the temporary custody loss of a child to the state. Involuntary termination of parental rights may only occur after a state adheres to these constitutional and statutory safeguards (Bogacki & Weiss, 2007; Dalley, 2002; Harding, 2001; Wien, 1997; Zubok, 2004).

The integrity of parental rights was established through a series of United States Supreme Court cases holding the rights of the family as constitutionally protected, where parental upbringing of the child is without state interference, unless otherwise compelling interests exist to intervene (“Constitution,” 1980; Friedelbaum, 2005). In the leading case, *Meyers v. Nebraska* (1923), the court emphasized the concept of liberty, a fundamental right protected by the 14<sup>th</sup> Amendment (“Constitution,” 1980; Friedelbaum, 2005). Together, these cases created an overall balance between the states’ punitive authoritative power and the states’ responsibility to act in the best interest of the child (“Constitution,” 1980; Friedelbaum, 2005).

While parental integrity was established as a fundamental right protected from state infringement, the concept of *parens patriae* laid the foundation for state intervention in pursuit of a child’s interests (“Constitution,” 1980). Literally meaning “parent of the country,” *parens patriae* is the state’s limited paternalistic power to protect the interest of those who lack the competence to sufficiently protect their own best interests (*Black’s Law*, 2009, p. 1). When the state intercedes, acting *in loco parentis*, it assumes parental duties, promoting and providing for the health, well-being, and security of the child (Hegar, 1983). Necessary for the prevention of harm to the defenseless, the *parens patriae* power of authority was delegated as the highest power of every state and



validated in the state statutes commenced by the Illinois Juvenile Court Act § 1, 1899, the United State's first juvenile court law ("Constitution," 1980; *Late Corp of the Church of Jesus Christ of Latter Day Saints v. United State*, 1889).

The concept of *parens patriae* delegates to the states, the right and duty to act in the best interest of the child, and dualistically serves as the origin of permitting termination of parental rights ("Constitution," 1980). The best interest of the child is a standard by which a court determines what arrangements would be to a child's greatest benefit, often used in deciding child-custody, visitation matters and adoptions approvals (*Black's Law*, 2009). Specifically, if there is the potential for a nurturing-emotional bond and future reunification, *parens patriae* favors relationship preservation, familial attachments and contact (Harding, 2001). While the Supreme Court has required evidenced of parental unfitness as a requisite prior to considering the best interest of the child (*Santosky v. Kramer*, 1982), the state's responsibility and duty to protect the incapable minor outweighs case precedent (*Late Corp of the Church of Jesus Christ of Latter Day Saints v. United State*, 1889). Therefore, the decision of the court is grounded in what best advances the welfare of the child, weighing multiple considerations including parental unfitness, characteristics and preferences of the child, emotional ties and physical environments (*Black's Law*, 2009; Hegar, 1983). Conversely, the parental rights test considers only the determination of fitness (Hegar, 1983).

The power of *parens patriae* to intervene or remove a child from parental guardianship is delineated and jointly carried out by the child welfare and youth court systems (Beckman, 1994, 1998; Crossley, 2003; Dicker, 2009; Wien, 1997). Integral to ensuring the current and future well-being of the child, the child welfare system defines *casework* as a comprehensive collaborative process to address family issues and pursue

reunification involving the parent, child, current caregiver, rehabilitative service providers, and the assigned caseworker (Hanlon et al., 2007).

Research has indicated a critical need for children to feel a sense of familial bond and family stability. The substantiated importance of a child's attachment and permanence became the basis for a case plan. Otherwise known as a permanency plan, it is developed after the child becomes a ward of the state (Beckerman, 1994; Gentry, 1998). A case plan is a document describing the child's placement and proper care, and proper services for the child, parent, caregiver, and caseworker for maximized reunification potential. The prospect and feasibility of reunification are principal to the circumstantial development of a permanency plan. Requiring parental involvement in the development and implementation, pre-requisite conditions are prescribed in both the case plan and court review hearings (Beckman, 1994, 1998; Crossley, 2003; Gentry, 1998). These conditions facilitate an optimal chance for reunification pending cooperation of the parent. Pre-requisite conditions include a means of maintaining contact between the parent and caseworker, regular discussion and confirmation on the willingness of the parent to reunite and successes and achievements of case plan requirements. Designated court hearings are scheduled to monitor the status, ability and efforts of the parent to assume parental responsibilities and prescribe further progress (Beckerman, 1994, 1998; Crossley, 2003; Dicker, 2009; Gentry, 1998).

The pre-requisite conditions for the parent in the permanency plan are of the same nature as the caseworker's requirement to make reasonable efforts. Commenced to ensure the adequacies of social services, reasonable efforts are made prior to out-of-home placement of a child in an effort to thwart the need for removal, or to facilitate a child's eventual return home (Beckerman, 1994; Crossley, 2003). In pursuit of reunification, it is

the duty of the child welfare worker to make reasonable or diligent efforts to uphold and strengthen the parent-child relationship (Beckerman, 1994, 1998; Gentry, 1998).

Although considered the minimum standard imposed, reasonable efforts should be made to prevent unnecessary destructions. While there has been no federal definition prescribing the fulfillment of reasonable efforts, the authority has been delegated to the state to define and disseminate policies and criteria. Put simply, reasonable efforts is the quality of service for first, preservation and when needed, reunification (Crossley, 2003; Gentry, 1998).

The responsibilities of the child welfare system are to facilitate and promote accomplishing case plan requirements; however, the court serves as the ultimate decision-maker as to the best interest of the child. The process of removing a child from parental guardianship and the state's placement *in loco parentis*, emphasizes the critical position of the court to be informed of the current and future well-being and safety of the child. The judge has the option to require support services when the court orders reunification with the family. Further, in cases where the child is unable to return home, the judge has the ability to order supervised visitation, assessments, and systematic evaluations of the child and parent stability (Office of Court Improvement, 2008; Dicker & Gordon, 2000). With the typical duration between court hearings ranging from 30 - 90 days, it is the responsibility of the child welfare worker to facilitate the court orders (Office of Court, 2008; Dicker & Gordon, 2000).

The court proceedings begin with an initial shelter hearing where the judge is presented with testimony of abuse, neglect, abandonment or other statutory violations and determines the placement of the child (Beckerman, 1994, 1998; Dicker & Gordon, 2000; Gentry, 1998; Office of Court, 2008). At the arraignment hearing, the parent

enters a response to the dependency petition. When the parent denies the allegation, an adjudication hearing is scheduled where the court determines the dependency of the child (Dicker & Gordon, 2000; Office of Court, 2008). Pending the dependency of the child, the child welfare worker provides the necessary information for placement and well-being recommendations at the conclusion of the disposition hearing (Beckerman, 1994, 1998; Dicker & Gordon, 2000; Office of Court, 2008). Having consistent contact with both parent and child, the caseworker presents the mental, emotional, physical, and developmental needs of the child, as well as the evidence ability of the parent to fulfill them (Beckerman, 1994, 1998). The disposition hearing provides an opportunity for the agency to present proposed permanency plans, visitation arrangements and other suggested services (Dicker & Gordon, 2000; Office of Court, 2008). Beyond the disposition hearing are case review hearings where the caseworker updates the court on the placement, cooperation, progress, successes, and stability of participating parties, as well as presenting the agency's reasonable efforts to facilitate reunification. At the petition for termination of parental rights, the child welfare agencies actions and attempts to reunifying the parent and child are thoroughly examined (Beckerman, 1994, 1998; Dicker & Gordon, 2000; Gentry, 1998; Office of Court, 2008).

While grounds for involuntary termination of parental rights range from abuse to neglect or abandonment, the greater portion of terminated parental rights are a result of failure to fulfill improvement requirements prescribed by both the child welfare agency and the court (Harding, 2001). Critics of child protective services and family courts attest to the overuse of terminating parental rights without serious or imminent threats to the child (Hegar, 1983). In this light, the termination of imprisoned parent's rights has become controversial. Both researchers and case precedent have indicated the importance

of consideration beyond the parental confinement. Court decisions have measured parental fitness by the ability to uphold the relational and parental value to the child (Gentry, 1991, 1998; *In re Adoption of Sabrina*, 1984).

Although precedent specifically indicates incarceration alone does not equate to parental unfitness, numerous approaches have been used to terminate the rights of imprisoned parents (Barry, Ginchild & Lee, 1995; Beckman, 1994, 1998; Gentry, 1991; Haley, 1977; Leonard, 1983; Muhar, 1991). Examinations of cases involving the termination of parental rights in cases of incarcerated parents have consistently revealed three schemes susceptible to termination (Barry et. al, 1995; Gentry, 1991; Haley, 1977; Leonard, 1983; Muhar, 1991). The most frequent and current scheme is based on the longevity of the prison sentences, the variations on release dates and confines of prison which enable findings of child neglect or abandonment. Further, accompanying the premise of neglect have been findings of depravity, lack of effort, substance abuse, and economic instability (Barry et. al, 1995; Beckman, 1998; Gentry, 1991; Hairston, 1991; Leonard, 1983; Muhar, 1991). The most controversial scheme is involuntary consent to waive parental rights, based on findings of abandonment, parental unfitness or failure to meet the best interest of the child standard. Despite the Supreme Court's holding in *Stanley v Illinois* (1972), that all parents are constitutionally- entitled to a hearing of parental fitness prior to custody deprivation, the controversy continues citing not only the legal severance without the ability to refute the facts, but also the ambiguity of the statutory language (Haley, 1977; Leonard, 1983; Muhar, 1991).

#### The Impact of Mass Incarceration

The United States incarceration rate has increased fivefold since the 1970s. In the 1970s, 2% of the nation's population was imprisoned during their lifetime. This figure

has risen to 6.6% in the 21st century (Pratt, 2009; Wilderman, 2009; Wilderman & Western, 2010). There has been a continuous increase in imprisonment rates over the previous three decades. This epic increase in prison rates has been termed the so called mass incarceration or the so called prison boom and is deemed a product of the punitive crime control movement in Age of Reagan (1933 – 1973) (Hagan, 2011; Pratt, 2009; Wilderman, 2009; Wilderman & Western, 2010).

President Reagan campaigned to “get tough” on crime, thus inherently bolstering the law and order campaign (Hagan, 2011, p. 22; Pratt, 2009). The law and order schema became the basis for the establishment of a federal sentencing commission and sentencing guidelines, implementing mandatory minimum sentencing, requiring the conviction of a specific offense to receive at least a prearranged minimum sentence (Hagan, 2011; Pratt, 2009; Smith & Young, 2003). As the nation’s fear of crime coincided with a drastic increase in the country’s drug use, the Anti-Drug Abuse Act (ADAA) of 1986 established mandatory minimum sentences for drug charges (Hagan, 2011; Smith & Young, 2003). The ADAA’s stricter drug laws affected prison populations, with the average sentence for drug related offenses extended to 74 months with the time served at 66 months (Luke, 2002; Smith & Young, 2003; Swann & Sylvester, 2006). This so called war on crime initiated the mass incarceration movement that tripled the number of inmates in state and federal prisons between 1980 and 1997 (Hagan, 2011; Phillips & Bloom, 1998).

The ADAA delineated guidelines criminalizing actions of a particular portion of the nation’s population (Hagan, 2011). With the majority of police actions focusing on illegal activity on street corners and in open air markets, law enforcement’s gravitation toward the streets accelerated arrests and sentencing in a particular population (Hagan,

2011). The differential focus was compounded by the ADAA's extended sentences for continual participatory action in drug enterprise, further segregating the populations. The ADAA fostered the segregated population, extending sentences for drug-related crimes. Victims of the targeted population were often deemed habitual offenders and sentenced to an additional 25 years (Hagan, 2011). Following the harsh penalties of the ADAA, the number of prisoners and the average length of sentence substantially increased (Smith & Young, 2003). The publicized success in eradicating the nation's growing problem of crime and drugs contributed to the escalation in the number prisoners in the 1980s and 1990s (Hagan, 2011; Wilderman, 2009; Wilderman & Western, 2010).

Female incarceration rates and sentence lengths increased substantially following the ADAA. Between the enactment of the ADAA and 1996, female drug offenses increased by 888% as compared to the 129% increase in non-drug related offenses (Luke, 2002; Smith & Young, 2003; Swann & Sylvester, 2006). In 2001, approximately 94,300 women were in federal and state prisons (Smith & Young, 2003; Wildman & Western, 2010). Further, BJS (2009) indicated that female incarceration rates were increasing at two times the rate of males and acknowledged women as the fastest growing population in America's prison system (Celinska & Siegel, 2010; West and Sabol, 2009).

Criminal justice experts cite both women and the economically-disadvantaged as falling victim to this selective incapacitation (Cheney-Lind, 1997; Hagan, 2011; Luke, 2002). Others go further, combining the two, and specifically attributing the so-called war on drugs and subsequent mandatory minimum sentencing and their economic disadvantage to the victimization of females (Celinska & Siegel, 2010; Chesney-Lind, 1997; Luke, 2002,). In a review of feminist theories, Simpson (1989) addresses "whether and how justice is gendered" during the criminal justice process, citing several studies

focusing on specific junctures for decision making (p. 258). As researchers characterize the women susceptible to incarceration as emotionally and financially strained, living under poverty level, uneducated, and single parents (Beatty, 1997; Beckerman, 1994; Hairston, 2007; Luke, 2002; Myers et al., 1999; Seymour, 1998); Kruttschnitt (1982,1984) posits the female's social stature and respect greatly influences the sentencing outcomes (as cited in Simpson, 1989). Further, Daly (1987, 1989) and Eaton (1986, 1987) cite marital status as the most deciding factor at the sentencing phase, indicating married women to receive more lenient sentences. Although Simpson (1989) found research prior to 1986 to indicate a consistent lenient stance toward females throughout the court process (Bernstein et al., 1977; Nagel, 1983; Nagel & Weitzman, 1972; Simon, 1975), the ADAA negated gender consideration with the implementation of mandatory minimum sentence (Wildman & Western, 2010).

Accompanying the substantial increase in incarceration rates, was an increase in parental incarceration rates. Acknowledging limitations in quantifying parental incarceration and the affected children, the Bureau of Justice Statistics (BJS) reports much of what is known as a product of periodic nationwide surveys of state and federal prison inmates (Christian, 2009). Gilliard and Beck (1998) reported an estimated 1.7 million prisoners were parents (Phillips & Bloom, 1998). Forty-six percent of them reported residency with their children prior to imprisonment. Those 721,500 parents abandoned over 1.45 million of the nation's 72 million minor children, over half younger than 9 years old (Mumola, 2000). Scholars agree the number of children of incarcerated parents has doubled between 1986 and 1997, with 10 in every 1,000 children having a parent in state or federal prison during the mid 1980s, and nearly 20 in every 1,000



children having one during 1997 (Johnson & Waldfogel, 2002; Murray & Farrington, 2006; Swann & Sylvester, 2006).

The likelihood of women and children to be impacted by the growing imprisonment rate more than doubled over the past three decades (Glaze & Maruschak, 2008, Johnson & Waldfogel, 2002; Luke, 2002). In 2004, the National Council on Crime and Delinquency deemed children of incarcerated mothers as the most vulnerable and “at risk” population (as cited in Dallaire, 2007, p. 16). Johnson and Waldfogel’s (2002) analysis of parental incarceration trends among state prisons revealed, 35% of the mothers were convicted on drug related offenses in 1997 (citing U.S. Department of Justice, Bureau of Statistics, 2000). Greenfield and Snell (1999) found maternal incarceration to be responsible for the care of an estimated 1.9 million dependent children with 9 of 10 (89%) of those children younger than 12 (Greenfield & Snell, 1999; Luke, 2002). A consensus among researchers estimates between 75% and 80% of incarcerated women were mothers to at least one minor child (Greenfield & Snell, 1999; Johnston, 1995a; Luke, 2002; Myers et al., 1999; Mumola, 2000; Snell, 1994).

While the female rate of imprisonment has increased over 200%, Mumola (2000) reveals continual maternal care for children during incarceration is more predominant than that of continual paternal care. Mumola (2000) reports 77% of mothers in state prisons and 84% in federal prisons indicated having lived with their children and providing daily care prior to imprisonment (Christian, 2009; Glaze & Maruschak, 2008; Mumola, 2000). Compared to an examination of incarcerated fathers, which indicates that 90% of those children resided with the natural mother. Snell (1994) found only 25% children with incarcerated mothers reside with a paternal caregiver (Gentry, 1998; Johnston, 1995a; Luke, 2002). Further, researchers consistently indicate that the majority

of female inmates reside in a single parent household prior to incarceration and are the primary caretaker (Christian, 2009; Glaze & Maruschak, 2008; Greenfield & Snell, 1999; Hairston, 2007; Luke, 2002; Mumola, 2000; Snell, 1994; Smith & Young, 2003).

Aware of the prolonged absence, Glaze and Marushak (2008) found that 85% of mothers documented as the primary care giver prior to incarceration express plans for continuation of care for their child upon release. However, research indicates that those females recognize and are in extreme fear of the possibility of losing custody of their children (Christian, 2009; Glaze & Marushak, 2008; Greenfield & Snell, 1999; Johnston, 1995a; Luke, 2002; Snell, 1994).

With escalating prison rates, extended sentencing requirements, and a disproportionate increase in female convictions, children are victims when their parents are incarcerated. Children of incarcerated parents constitute a growing body of the foster care population as a result of the increased prison rates. In 1985, 276,000 children were in foster care. By 1999, with more than 568,000 children of incarcerated parents in foster care, child welfare agencies more than doubled their encounters with this unique population (Hayward & DePanfilis, 2007; Johnson & Waldfogel, 2002; Luke, 2002; Mumola, 2000; Swann & Sylvester, 2006). Swann and Sylvester (2006) posited parental absence due to incarceration, directly impacted the foster care population in magnitude as well as unique case requisites.

Scholars agree on an estimated 98% increase in the number of children with incarcerated mother between the 1980s and 1990s (Johnson & Waldfogel, 2002; Luke, 2002; Mumola, 2000; Swann & Sylvester, 2006). Further research reveals the domino effect on the child welfare system reporting children whose mothers are incarcerated are five times more likely to enter the foster care system than those children whose male

parents are in prison (Hayward & DePanfilis, 2007; *Prima Prevention*, 2007; Seymour, 1998; Swann & Sylvester, 2006). More recently, reporting from the *Survey of Inmates in State and Federal Correctional Facilities*, Hairston (2007) and other researchers have found that 10% of mothers in prison have children in foster care (Hayward & DePanfilis, 2007; Mumola, 2000). Acknowledging the sizeable entry of parents into the prison population and the consequential dependency of more than 1.3 million children, children of incarcerated parents have created a parallel influx in the foster care population (Hairston, 2007; Johnson & Waldfogel, 2002; U.S. Department of Justice, 2000).

#### Federal Legislation

The 1980 Adoption Assistance and Child Welfare Act (AACWA) established the initial financial support for adoption, prevention, and reunification services. As a congressional attempt to offset foster care expenditures through the promotion of permanency planning, the act was intended to increase the adequacy of services on the front end, and in cases where reunification was not feasible, promote adoption at the back end. The act's goals of improved services at the entry point of the child welfare system and emphasis on permanency planning were undermined by insufficient guidelines for reasonable efforts. Furthermore, the success of the AACWA was negated, due to economic advantages dependent on the quality of service delivery (Crossley, 2003). With the responsibility for service excellence delegated to states without additional funding, potential benefits were nullified. The cost efficient solution of temporary foster care went unnoticed, leaving funding for permanency planning and reunification insufficient (Crossley, 2003; Smith & Young, 2003).

The failure of AACWA was compounded by the rates of mass incarceration which had a dramatic increase in the foster care population. This led to the enactment of

ASFA in 1997 with high expectations for its success. Both AACWA and ASFA established provisions to achieve goals of reducing the foster care population through permanency planning. However, when inadequate reasonable efforts resulted in the reunification and subsequent death of two children, ASFA was created to minimize dissatisfaction with child welfare agencies by emphasizing the safety of children who were reportedly remaining in or returning to unfit homes (Crossley, 2003; Hanlon et al., 2007; Lee, Gentry, & Laver, 2005; Zubok, 2004). ASFA's impetus was an effort to remove children from home environments characterized by abuse and neglect, promote adoption, secure permanent home placement, and stabilize at-risk families.

Initiating a stark swing in the mission of child welfare to permanency planning and adoption, ASFA diminished the broader purpose of the child welfare system in the preservation of the family unit and promotion of the child's well-being (Crossley, 2003; Dicker, 2009; Zubok, 2004). While reaffirming the need to fulfill reasonable efforts, it provided specific placement, provisions, and permanency measures to ensure maintenance of the child's safety and well-being (Bogacki & Weiss, 2007; Dicker, 2009; Swann & Sylvester, 2006).

Though prior to ASFA, the goal of child welfare agencies and the foster care system was to promote reunification with the natural parents, congressional attention sought to reestablish short-term foster care, resulting in emphasis, through provisions in ASFA, on expediting permanency plan achievement and adoption (Harding, 2001, Barone, Weitz & Witt, 2005). Reauthorizing the 1993 federal Family Preservation Assistance and Support Program, ASFA provided financial incentives to states, and doubled federal funding for permanency planning and reduction of foster placement (Dicker, 2009; Skinner & Kohler, 2002; Swann & Sylvester, 2006; Zubok, 2004). With

the implementation of incentives for adoption, the federal efforts generated an increase in adoption rates, as well as a reduction in the foster care population (Crossley, 2003; Zubok, 2004).

In promoting permanency for children in foster care, ASFA initiated concurrent planning requirements for termination of parental rights and permanent placement. It has also expedited time limits for conclusive decisions on reunification or termination of parental rights. These include the mandate to hold a permanency planning hearing for permanency plan development within 12 months of a child's entry into care and the mandate for states to petition for termination of parental rights if the child has been in foster care for 15 of the most recent 22 months (Dicker, 2009; Hanlon et al., 2007; Hort, 2001; Phillips & Bloom, 1998; P.L. 105-89; Swann & Sylvester, 2006). The law provides exceptions to this requirement for three circumstances; relative placement of child, the state has documented and compelling reason to not file for termination of parental rights in the best interests of the child, and failure of the state to provide appropriate services for safe reunification in the home (Christian, 2009; Hort, 2001; P.L. 105-89).

ASFA strengthens judicial discretion as reasonable efforts, the best interest of the child, and the so called parental fitness are ambiguously defined (Dicker, 2009; Skinner & Kohler, 2002; Swann & Sylvester, 2006; Zubok, 2004). Additionally, it includes an aggravated circumstances clause allowing waiver of reasonable efforts under specifically outlined circumstances. The ASFA is a state law, meaning that while there is the requirement of termination of parental rights within the AFSA, the state, through its statutes, defines the legal basis for the actual termination (Christian, 2009; Dicker, 2009; Hort, 2001; P.L. 105-89).

Though ASFA targeted the apparent shortfalls of AACWA, it has shortfalls of its own, with unanticipated impacts on the unique population of children of incarcerated parents. As with the implementation of ASFA, shortfalls in interpretation, clarity and execution of the child welfare constructs of reasonable efforts, parental fitness, and best interest of the child have impacted incarcerated mothers and their children in unexpected and detrimental ways.

### Obstacles for Incarcerated Parents and Their Children

Despite the detrimental effects of incarceration and the impact on mothers, their children and their relationships, a review of cumulative research reveals a persistent maternal instinct among incarcerated females (Beatty, 1997; Block & Potthast, 1998; Celinska & Siegel, 2010; Hayward & DePafilis, 2007; Johnston, 1995a, 1995b; Luke, 2002; McGowan & Blumenthal, 1978). Studies of female incarceration have consistently found maternal concern about the effects of separation and incarceration on the child's well being and that mother-child separation is the most agonizing aspect of imprisonment (Beatty, 1997; Celinska & Siegel, 2010; Hairston, 1991; Luke, 2002; Johnston, 1995a; Seymour, 1998). Further, inmate mothers are intensely aware of the suffering incarceration has imposed on their child and the time lost (Block & Potthast, 1998; Bloom & Steinhart, 1993; Celinska & Siegel, 2010; Gentry, 1998; Johnston, 1995a; Luke, 2002; Seymour, 1998). In her research on female incarceration, Hairston (1991) consistently identified both an emotional bond and a sense of responsibility within the parent-child relationship prior to incarceration.

Recognizing that the majority of inmate mothers are incarcerated for crimes unrelated to their parenting, researchers have proposed a recognizable difference between the parenting attitudes of inmate mothers' and the attitudes of non-incarcerated parents.

When examining the parent's willingness, consideration, and desire toward love, affection, and guidance, the parenting attitudes of inmate mothers' equal or exceed the majority of non-incarcerated parents (Chesney-Lind, 1997; Leflore & Holston, 1989; Luke, 2002; Seymour, 1998; Shanely, 2008; Wright & Seymour, 2000). Inmate mothers consistently identify the continuance and promotion of their parent-child relationship and maintaining custody of their child as their goals during imprisonment (Block & Potthast, 1998; Bloom & Steinhart, 1993; Luke, 2002). Further, researchers have found the majority of mothers reported both sole responsibility for the child pre-incarceration, and the willingness to maintain those responsibilities throughout incapacitation (Beckerman, 1998; Christian, 2009; Glaze & Marushak, 2008; Hairston, 1991; Hanlon et al., 2007). Carrying out the responsibilities and/or demonstrating the desire to do so, though paramount to maintaining parental rights are often met with a myriad of obstacles as a result of incarceration.

### *Reasonable Efforts*

To ensure the preservation of the parent-child relationship, child welfare agencies are legally bound to make reasonable efforts toward reunification and permanency planning. Statutory definitions of reasonable efforts vary considerably among the states. In pursuit of maintaining parental relationships, some states have specified guidelines for achieving reasonable efforts in cases of incarceration (*Child Welfare*, 2007; Christian, 2009; Gentry, 1998; Hort, 2001). Gentry (1998) found both California and New York delineate specific services in cases of incarceration including covering the cost of collect phone calls, providing transportation and opportunity for visiting, and the consideration of, as well as opportunity for rehabilitative services in permanency planning.

While the initial extended period of separation threatens a continued parent- child relationship, the consequential emotional effects of incapacitation and separation affect permanency planning and the possibilities of reunification (Allard, 2006; Beckerman, 1994; Block & Potthast, 1998; Gentry, 1998; Hanlon et. al, 2007; Hayward & DePanfilis, 2007). Correctional facilities compound the problem presenting further challenges. Not only do the distant prison locations both deter and impede the opportunity for routine visitation, but safety and security policies, procedures and regulations often affect the ability and willingness of all involved parties to sustain a continual relationship. Specifically hindering contact and visitation, policies, procedures, and regulations completely control the flow of mail, telephone calls, and visitors (Block & Potthast, 1998; Clark, 1995; Gentry, 1998; Leonard, 1983; Seymour, 1998). While Gentry (1991, 1998) posits the necessary recognition among child welfare agencies in the importance of maintaining parent-child relationships, these challenges strain child welfare agencies resources and present obstacles to reasonable efforts.

*Contact/Visitation.* Researchers, practitioners, and advocates alike, correlate maintaining a positive emotional bond through mother-child contact during incarceration with mutually beneficial and reinforcing outcomes for both children and their mothers (Beckerman, 1989, 1998; Dallaire, 2007; Davis, Landsverk, Newton & Granger, 1996; Gentry, 1998; Hanlon et al., 2007; Hayward & DePanfilis, 2007; Johnston, 1995b; Myer et al., 1999; New Mexico's Court Improvement, 2006; Shanley, 2008; Young & Smith, 2000). Recognized as the strongest protective factor in a child's life, research indicates that the absence of parental attachment can prove detrimental to the well-being of a child (Luke, 2002; Seymour, 1998; Shanley, 2008; Thompson & Harm, 2000). The participation in parent-child contact and visitation following incarceration has been



documented as easing the children's emotional reactions, aiding in child development, reducing misbehavior and maintaining a sense of identity (Garrison, 1983; Gentry, 1998; Hayward & DePanilis, 2007; Johnston, 1995b; Myers et al., 1999). While contact allows opportunities to exercise maternal instincts, offering support and reassurance to the child, research confirms a stabilized process of rehabilitation, particularly substance abuse, among female inmates, when the parent-child contact is maintained throughout the prison term (Beckerman, 1998; Halperin & Harris, 2004; Hanlon et al., 2007; Laughlin, Arrigo, Blevin, & Coston, 2008; Johnston, 1995b; Young & Smith, 2000). Furthermore, consistent parent-child contact and visitation is important to the likelihood and success of reunification following release (Beckerman, 1998; Davis et al., 1996; Hanlon et al., 2007; Hayward & DePanilis, 2007; Johnston, 1995b; Myer et al., 1999; New Mexico's, 2006; Thompson & Harm, 2000). Davis and colleagues (1996) found mothers who participated in weekly parent-child visitation were 10 times more likely to reunify with their child post-incarceration.

Research has consistently indicated the positive impact of routine contact between the incarcerated mother and her children. The importance of contact however is undermined by the obstacles imposed by incarceration, working against the ability of not only the mother to maintain this crucial relationship, but the children and caseworkers as well (Beckerman, 1998; Bloom & Steinhart, 1993; Christian, 2009; Crossley, 2003; Gentry, 1998; Seymour, 1998). Challenges to continued maternal contact are inherent in incarceration. The majority of law enforcement and child welfare agencies lack consistent procedures for intake and documentation of children upon parental arrest and confinement, making gathering information on the location of the child's placement, contact information of the foster family and the name of the assigned caseworkers for

initial contact difficult (Beckerman, 1998, Bloom & Steinhart, 1993; Gentry, 1991, 1998; Seymour, 1998). Beyond contact, the fragile relationship requires visitation. By definition, a contact visit is one in which the child may have physical contact with the incarcerated parent. Realistically, however, in many correctional facilities, contact visits may not be possible (Beckerman, 1989; Christian, 2009; Myers et. al, 1999; New Mexico's, 2006; Simmons, 2000).

The crucial implications of contact reach far beyond the emotional bonding of the mother and child. Maintaining healthy, continuous interaction is essential to the parent's fulfillment of the case worker's prescribed permanency plan prerequisites. Both contact and particularly visitation are determining factors in the court's assessment process for establishing evidenced parental fitness (Allard, 2006; Beckerman, 1998; Gentry, 1998; Halperin & Harris, 2004; Langlin et al., 2008). Researchers cite a significantly decreased probability of terminating parental rights when the parent has demonstrated consistent, emotionally-beneficial contact with the child, as well as the desire and willingness for involvement in the child's life (Christian, 2009; Gentry, 1998; Glaze & Maruschak, 2008; Hayward & DePanilis, 2007). However, the emotional and procedural importance of sustaining the maternal relationship is heavily dependent on the diligence of the child welfare worker.

The constraints of incarceration also affect caseworkers. Beckerman (1998) directly connects the inability to facilitate the recommended relationship to the caseworker's obstructed contact with the inmate mother whether through personal visits, telephone, or correspondence. Although acknowledging the potential strain on child welfare resources, Gentry (1991) conversely found the documented efforts of child welfare agencies did not accurately express the importance of maintaining parental

contact, thus succumbing to the obstacles rather than attempting to overcome them (Crossley, 2003; Gentry, 1991, 1998; Hort, 2001; Leonard, 1983). The agency and caseworker efforts toward contact and visitation have a subsequent affect on reunification as a goal, determining the probability of achievement (Crossley, 2003; Hayward & DePanfilis, 2007).

Whether the result of impeded contact or surrendering to the obstacles, research has shown contact and visitation as most crucial to children of prisoners living in foster care, yet these children are the least likely to visit their parents (Beckerman, 1998; Christian, 2009; Glaze & Maruschak, 2008; Hanlon et al., 2007; Johnston, 1995b). This vulnerable population falls victim to visits that require proactive arrangements and authorization by child welfare workers who may succumb to the obstacles and nullify the possibility of reunification (Christian, 2009; Gentry, 1998; Hort, 2001; Leonard, 1983).

The Bureau of Justice Statistics (2007) indicated that 56% of incarcerated mothers received some form of weekly contact, by letters, telephone calls, or visits; however, only 8% saw their children weekly (as cited in Christian, 2009). Further, researchers have estimated at least 50% of incarcerated mothers never receive any visits from their children (Block & Potthast, 1998; Bloom & Steinhart, 1993; Christian, 2009; Hairston, 1991; Myers et al., 1999; Simmons, 2000; U.S. Department of Justice, 1993).

With contact between children and incarcerated parents inundated with barriers, the single most significant barrier to personal visitation is the child's distance from the location of the parent with the majority located far from major population centers and thousands of miles from home (Allard, 2006; Christian, 2009; Clark, 1995; Gabel & Johnston, 1995; Gentry, 1998; Johnston, 1995a; Mumola, 2000; New Mexico's, 2006; Phillips & Bloom, 1998; *Prima Prevention*, 2007; Simmons, 2000). Fewer available

women's facilities nationwide cause inmate mothers to be placed further from home (Beatty, 1997; Dalley, 2002; Gentry, 1998; Simmons, 2000). Compounding the problems with consistent visitation, is the often remote location and inaccessibility to public transportation where child visitors are not only dependent on the caregiver, but dependent on the caregiver's access to transportation (Gabel & Johnston, 1995; Johnston, 1995a; Phillips & Bloom, 1998; *Prima Prevention*, 2007; Simmons, 2000; Shanely, 2008). Bloom (1995) found that more than 60% of children of prisoners lived more than 100 miles away from their parents correctional facility while research reveals a substantial decrease in the likelihood of visitation with children living more than 100 miles away (Beatty, 1997; Gentry, 1998; Myers et al., 1999). Describing the defenselessness of the child in a study focusing on the opportunity for visitation, Clark (1995) found that while many children were persistently positive about the opportunity for visitation, the visit is inevitably dependent upon either the caregiver or caseworker for transportation. For both of these, research indicates resistance to facilitating visitation (Beckerman, 1994, 1998; Block & Potthast, 1998; Myers, et al., 1999; Seymour, 1998; Shanely, 2008).

Additionally, amid the correctional policy implications, contact visitation and interaction are sacrificed in the name safety and security. Obstacles such as proof of the child's birth certificate listing the prisoner as the biological parent and the requirement of the custodial parent to escort the child can intimidate and impede visitation. Prison policies are initiated to maintain a secure environment, with privileged amenities, such as telephones. Accompanied by access fees or time limitations, policies may either allow access to telephone calls weekly based on prisoners' incomes, or require inmates to place out going collect calls. However, standing policies throughout most correctional facilities prohibit inmates from receiving personal incoming calls. Although the inmates' most

accessible form of communication is correspondence, it, too, is regulated through specific procedures. Most importantly, visitation is also strictly controlled with specified hours, exacting rules, and tight security (Beckerman, 1998; Bloom, 1995; Christian, 2009; Clark, 1995; Johnston, 1995a, 1995b; Leonard, 1983; Seymour, 1998; Shanley, 2008; Simmons, 2000).

The disabling inconveniences of incarceration, compounded by the prison environment can prove traumatic for a child, instilling fear and intensifying anxieties (Christian, 2009; Bloom & Steinhart, 1993; Johnston, 1995b). Visitation prerequisites can include long waits, body frisks, rude treatment from staff and inmates, and crowded visiting rooms. Uncomfortable and conducive to only adult conversation, most visitation rooms have no activities or entertainment for children. Further, some jails have only non-contact visitation separating inmate and visitor with either plexiglass, leaving only telephone communication, or wire barriers, thus diminishing the potential intimate conversation and bonding (Block & Potthast, 1998; Bloom & Steinhart, 1993; Christian, 2009; Myers et al., 1999, Shanely, 2008).

Personal relationships can also lay the foundation for a barrier to visitation. A key factor that affects the possibility and consistency of contact with the incarcerated parent is the relationship between the current caregiver and the inmate (Johnston, 1995b; Shanely, 2008). In a survey of over 200 prison visitors, Johnston (1995b) found both caregivers and caseworkers made efforts to avoid visitation due to the child's behavior or reaction during the visit. Other commentators cite the facilitator's perception of the facility surrounding as too harsh or frightening for the child to endure (Bloom & Steinhart, 1993; Hairston, 1991; Myers et. al, 1999; Shanely, 2008). Despite the research promoting visitation and the benefits of a maintained parent-child relationship, some

caregivers cite the injurious influence of the mother as the sole basis for discouraging visitation (Block & Potthast, 1998; Bloom, 1995; Bloom & Steinhart, 1993).

*Restricted Access to Welfare Services.* Noting the unique challenges to children of imprisoned parents, the efficiency and effectiveness of child welfare services in efforts to overcome obstacles of incarceration have been characterized as indifferent and unresponsive (Barry, 1985a, 1985b; Beckerman, 1994, 1998; Crossley, 2003; Gentry, 1991, 1998; Hairston, 2009; Hanlon et al., 2007; Henriques, 1982; McGowan & Blumenthal, 1978). A mother's access to welfare services is critical to the overarching goal of reunification. From the confines of prison, an inmate mother's ability to meet the typical prerequisites delineated in a permanency plan is thwarted by the limited availability of services. Services range from availability of rehabilitation and parenting, and visitation programs, notification of court dates, and communication outlets to critical knowledge of the caseworker assigned, permanency planning prerequisites and the court's expectations (Barry, 1985a, 1985b; Beckerman, 1994, 1998; Bloom, 1995; Crossley, 2003; Gentry, 1991, 1998; Hairston, 2007, 2009; Hanlon et al., 2007; Henriques, 1982; Johnston, 1995a; Myers et. al, 1999; Seymour, 1998). Beckerman (1994) concluded two main efforts facilitate and ensure both the mother's involvement in permanency planning and the caseworker's expected effort to fulfill the possibility of reunification: telephone and correspondence contact between mothers and caseworkers; and pro-active notification of upcoming court dates. These allow a joint identification of desirable living conditions and agreed pursuant goals (Beckerman, 1994).

With seemingly insurmountable complications in establishing and maintaining a meaningful relationship between an incarcerated mother and her child, research has consistently conveyed contact constraints between imprisoned mothers and caseworkers

(Beckerman, 1994, 1998; Block & Potthast, 1998; Bloom & Steinhart, 1993; Gentry, 1998; McGowan & Blumenthal, 1978; Seymour, 1998; Wright & Seymour, 2000). Multiple studies of maternal incarceration indicate communication adversities for both the confined mothers, as well as the child welfare agencies (Barry, 1985a, 1985b; Beckerman, 1994, 1998; Bloom & Stienhart, 1993; Henriques, 1982; Johnston, 1995a; Luke, 2002; McGowan & Blumenthal, 1978). Just as correctional policies limit parent-child visitation and contact, safety and security prevail over the importance of communication between the caseworker and inmate. Unable to receive telephone calls, the caseworker's phone calls are often deferred to the inmate's prison counselor who must approve of the communication and inform the inmate of received or attempted contact (Allard, 2006; Beckerman, 1994, 1998; Gentry, 1998; Phillips & Dettlaff, 2009; Seymour, 1998). Gabel and Johnston (1995) found, in observing the revisions to both child welfare and correctional policies to more easily facilitate communication, telephone restrictions in prisons were among the lesser addressed issues, along with easing fiscal and staff inadequacies of child welfare agencies (Gabel & Johnston, 1995; Greenfield, 1992). Further, as the vast majority of inmate mothers are poorly educated, illiteracy stands as a compounding obstacle, limiting the chance of correspondence (Beckerman, 1994, 1998; Smith & Young, 2003).

In her research on maternal incarceration, Beckerman (1994) found that 42% of mothers in prison phoned their caseworker at least monthly. However, further investigation also revealed that while only 25% of inmate mothers reported having never tried to contact their caseworker at all, almost 75% had never received telephone contact from their case worker and 49% had never received correspondence (Beckerman, 1994). Beyond the obstacle of communication, is the knowledge to ask pertinent questions.

Knowing only what is shared by other inmate mothers, researchers have found that the majority of mothers regularly discuss their child's well-being and post-release plans, unknowingly overlooking important questions and information for fulfilling prerequisite conditions. Many inmate mothers are unaware of their lack of knowledge, vaguely knowing their rights and responsibilities (Beckerman, 1989, 1994, 1998; Gentry, 1991, 1998; Halperin & Harris, 2004; Leonard, 1983; McGowan & Blumenthal, 1978).

The importance of contact and communication in reunification efforts culminates in permanency planning and participation, the necessary but seemingly unattainable link in light of the considerable obstacles facing incarcerated parents. According to most child welfare agency guidelines, communication is key to the proper development of a permanency plan, where consideration for all parties is given, thus ensuring a constructive and feasible plan (Dicker, 2009; Hanlon et al., 2007; Marcus, 1995; U.S. Department of Health and Human Services, 2008). However for incarcerated parents, all parties are rarely involved and the prescribed preconditions are nearly impossible (Christian, 2009; Smith, 1995; Wright & Seymour, 2000).

Participation is crucial; however, the incapacitation of prison leaves the parent completely dependent on the caseworker for judicial information such as hearing dates, transportation notifications, court orders, as well as case plan expectations and opportunities for fulfillment (Beckerman, 1994, 1998; Christian, 2009; Luke, 2002; Wright & Seymour, 2000). Equally important are caseworker's supportive recommendations and guidance throughout the permanency process. Incarcerated mothers have indicated feeling helpless and unable to control the future of their parent-child relationship (Beckerman, 1994, 1998; Block & Potthast, 1998; Bloom & Stienhart, 1993; Christian, 2009; Luke, 2002; McGowan & Blumenthal, 1978; Wright & Seymour,



2000). Studies have revealed most caseworker's efforts toward properly informing the mother of important information are less than adequate (Barry; 1985b; Beckerman, 1994, 1998; Christian, 2009; Henriques, 1982; McGowan & Blumenthal, 1978). As some researchers excuse the insufficient efforts of child welfare workers due to high caseloads, others have found that caseworkers feel largely ill-prepared to deal with obstacles presented by incarceration, reporting lack of training or guidance (Barry, 1985a, 1985b; Beckerman, 1994; Christian, 2009; Gentry, 1998; Henriques, 1982; McGowan & Blumenthal, 1978; Norman, 1995).

Following most child welfare agency's guidelines, all prerequisite conditions in a permanency plan are a collaborative effort constructed for the hope of reunification. However, contrary to the expected procedures, research has shown a failure to consider imprisoned parents in the development of the case plan leaving them ill-informed of the prerequisite conditions (Barry; 1985b; Beckerman, 1994, 1998; Christian, 2009; Henriques, 1982; McGowan & Blumenthal, 1978; Smith, 1995; U.S. Department of Health and Human Services, 2008). Parental participation and appearance is expected at court review hearings, thus imprisoned parents are dependent both on timely notification of future court dates and transportation to and from the proceedings. Upon the judge's subpoena for a mother to appear in court and a court order request for transportation, it is the duty of the correctional facility to transport the inmate on the day of the proceedings (Beckerman, 1994; Nickel et al., 2009; Seymour, 1998). Dependent on the predetermined timing and procedures of the judge, caseworker, and correctional officials, attendance at court review hearings is just one of the multiple dependencies in an imprisoned mother's plan for reunification.

In one of the first and larger studies on maternal incarceration, McGowan and Blumenthal (1978), among other findings, identified the services needs of incarcerated mothers finding mothers ill-informed of their judicial responsibilities. Beckerman (1994) confirmed and narrowly updated their research. Although finding more than half of the surveyed incarcerated mothers receive court appearance notifications at least one month prior to the court date, 47% were unaware of either the timely process for requests of transportation and appearance or the actual need to begin the process of request. Those females that reported having no notice of future courts dates indicated receiving most of their information from fellow inmates (Beckerman, 1994).

An imprisoned mother's reunification with her child is also highly dependent on her rehabilitation and efforts toward self improvement. Prescribed in the permanency plan, many incarcerated parents are expected to receive substance abuse treatment or counseling, based on their crime and behavior. Among inmate mothers, vocational classes and parenting education classes are the most populated (Beatty, 1997; Beckerman, 1998; Luke 2002; Myers et al., 1999; Seymour, 1998). Restricted to the services available in prison, research indicates there is limited access to the services in prison. Restricted to the correctional facilities' available services, an imprisoned parent's chances of fulfilling all the prescribed conditions in a timely manner are thwarted (Barry, 1985b; Beatty, 1997; Beckerman, 1998; Gabel & Johnston, 1995; Luke 2002). According to the U.S. Department of Justice (1993), not only are the majority of residential drug treatment programs in male correctional facilities, but less than 10% of all prisoners were enrolled. Furthermore, because there are fewer female prisons, a small portion of that 10% is female. Further, only 10% of female inmates were attending or enrolled in psychological counseling. The limited availability of correctional rehabilitation programs

is compounded by insufficient information provided by both, the caseworker and correctional staff, on other available self-improvement, rehabilitation opportunities (Gabel & Johnston, 1995; Gentry, 1998; Luke, 2002). The deficiencies a mother experiences from the absence of rehabilitative services, impedes not only her ability to better herself but also her opportunity for necessary emotional support (Beckerman, 1998).

### *Parental Fitness*

Applied in the mid-20<sup>th</sup> century, the best interest of the child standard has been widely recognized by courts and child welfare agencies alike, upholding the protection and promotion of the child's well-being as guidance to permanent placement (Bogacki & Weiss, 2007; Dalley, 2002; Dicker, 2009). Conversely, though there is not a consensus on the *correct* upbringing of a child, parental fitness is the determining standard for the understanding and compliance to fundamental parenting skills, to ensure the child's safety and well being (Barone et al., 2005; Dicker, 2009; Friedelbaum, 2005).

Accounting for the physical environment and financial stability as well as the mother's ability and willingness to assume the rights, relationship, and responsibilities of parenthood, the exemplification of parental fitness is central to the over-arching goal of reunification and is prescribed within the permanency plan (Barone et al., 2005; Beckerman, 1998; Friedelbaum, 2005; Gentry, 1998).

In evaluating the fitness of a parent, Barone and colleagues (2005) and Friedelbaum (2005) cited five ambiguous areas of consideration. The cognitive functioning, emotional functioning and behavioral history are determined sufficient individually, then comprehensively applied in determining the ability of the parent to effectively raise a child. The final consideration is sufficed through the parent's

demonstrated motivation to maintain parent-child relationship (Barone et al., 2005; Friedelbaum, 2005). A determination of unfitness is case specific and proven beyond clear and convincing evidence, requiring the courts full examination of the facts (Gentry, 1998; *Santosky v. Kramer*, 1982).

Although courts have consistently held that imprisonment itself does not constitute unfitness, in the evaluation of parental fitness the five areas presented by Barone and colleagues (2005) and Friedelbaum (2005) are fraught with underlying conditions conducive to the termination of parental rights, conditions embodied in the prison environment. Citing previous research, a number of factors including drug and alcohol withdrawal, the sudden severance of parent-child contact, the associated shame, and the harsh reality of prison surroundings are conducive to abnormal cognitive and emotional functioning. While behavioral history may be a trivial consideration for a non-incarcerated mother due to her current placement, the inmate mother faces the possibility of a biased assessment.

Courts have ruled the ability to “maintain a place of importance in the child’s life” is suitable to determining “parental fitness” in cases of parental incarceration (Gentry, 1998; *In re Adoption of Sabrina*, 1984, p. 627). As such, the fourth and fifth considerations become often-debated concerns (Barone et al., 2005; Friedelbaum, 2005). The constraints of prison limit the incarcerated parents’ ability to demonstrate not only applicable parenting skills, but also an obligatory magnitude of motivation. Magnitude is measured in the number of contacts and visitations, cooperation with child welfare professionals, and voluntary affirmative gestures in cooperation with and outside of case plan requirements. The incapacitation of imprisonment severely impedes even basic demonstrations of motivation, almost eliminating any voluntary element (Beckerman,

1998; Halperin & Harris, 2004; Seymour, 1998). Further, the common interpretation of reasonable efforts includes child welfare assistance in fulfilling and maintaining contact and visitation, so although maternal motivation is present the ability to independently meet the requirements is not. The interpretation of the mother's commitment is subjective to the professionals' caseload, priorities, and judgment of foreseeable reunification (Allard, 2006; Beckerman, 1998; Halperin & Harris, 2004; Laughlin et al., 2008).

Research on maternal imprisonment has consistently indicated that prison becomes a unique opportunity for mothers to address their insecurities and concerns about parenting and acquire skills to for self improvement (Celinska & Siegel, 2010; Johnston, 1995a; Luke, 2002; Wright & Seymour, 2000). Commentators cite the motivational role children play for women in prison as a primary reason for change (Celinska & Siegel, 2010; Luke, 2002). Others note that time spent in prison may actually improve an inmate's parental relationships and capabilities (Johnston, 1995a; Wright & Seymour, 2000). Lending support to the potential for enhanced learned parental skills, Luke (2002) found in her Minnesota study on effects of maternal incarceration that parenting classes were among the most popular correctional services available. However, while parental fitness is grounded in the mother's rehabilitation, reunification with her child is again hampered by the confinement of prison. Citing the longevity of prison terms, a lack of cooperation or motivation, insufficient fulfillment of service, or inadequate maintenance of parent-child relationship, previous incarcerated parents have had their rights terminated (Allard, 2006; Beatty, 1997; Beckerman, 1998; Halperin & Harris, 2004; Laughlin et al., 2008; Luke 2002; Myers et al., 1999; Seymour, 1998).

*Best Interest of the Child*

Focusing on the incapacitation of the parent, the best interest of the child has become subordinate to the challenges of parental incarceration. Although visitation and contact are at the will of the correctional facilities and child welfare agencies, the evidenced insufficient opportunity and scant cooperation produce inadequate parent-child interaction, contradicting the best interest of the child with limited chance for sustaining a relationship (Barry, 1985a, 1985b; Beckerman, 1994; Crossley, 2003; Gentry, 1991; Hairston, 2009; Halperin & Harris, 2004; Hanlon et al., 2007; Henrique, 1982; Laughlin et al., 2008; Seymour, 1998). In her research on the effects of maternal incarceration when examining the policies of those who influence the outcome of inmate mothers, Dalley (2002) found the goals of the adult and juvenile judicial systems were contradictory. While the juvenile court is focused on the best interest of the child, promoting their well-being and future, the adult criminal courts and correctional facilities are concerned with the parents' punishment and facility security and protocol. The drastic incongruities nearly eliminate the potential for serving the best interest of the child and facilitating healthy development, emotional parental bonds, and compatibility (Dalley, 2002; Hegar, 1983; Luke, 2002; Myers et al., 1999; Seymour, 1998). Contrary to the evidence based beneficial parent-child interaction, research has concluded the ambiguous definitions of the child's best interest enables courts and social workers to find insufficiencies in the fulfillment of parental prerequisites both facilitating the termination of the caseworker's reasonable efforts as well as parental rights (Crossley, 2003; Dalley, 2002; Gentry, 1991; Leonard, 1983).

A dissenting judge in *In re Diana P.* (2005) points out the vulnerabilities in the termination of parental rights, stating, "A child may be taken away from a parent, in the

best interests of the child and for reasons that have nothing to do with unfitness of that parent. At the expiration of one year, a parent may have his or her parental rights terminated absent any particularized showing of unfitness, simply because he or she cannot satisfy the conditions set by the trial court” (as cited in Marsh, 2005, p. 77). Finding children of incarcerated parents to substantiate a growing portion of the foster care population, determining whether the termination of parental rights statutes sufficiently consider the best interest of the child and parental fitness in cases of children of incarcerated parents is beneficial, revealing, and necessary.

### *ASFA Impacts*

The increased percentage of children with incarcerated parents in the foster care population presents child welfare agencies with unique challenges in accomplishing the requisite reasonable efforts. However, child welfare policies have created tensions between the expectations of fulfilling parental duties and what incarcerated parents are actually capable of fulfilling from the confines of prison. Aimed at shortening the amount of time spent in foster care, ASFA has heightened tension with federal incentives available for expediting case permanency plans. While a permanency plan is ideally established for the purpose of family reunification, supporting the best interest of the child standard by mending the parent-child relationship provided the substantiation of parental fitness, the ASFA incongruously encourages petitions for termination of parental rights (Allard, 2006; Johnson & Waldfogel, 2002; Swann & Sylvester, 2006; Zubok, 2004). Research on reported termination of parental rights cases from 1997 through 2002 reflected a significant increase in the number of termination cases during this period suggesting that ASFA has had an important impact. Furthermore, surveyed judges and

attorneys indicated the opinion that children of incarcerated parents are impacted by ASFA differently than other children (Lee et al., 2005).

The arrest and longevity of the prison sentence alone have been found to be detrimental to the parent-child relationship. ASFA, according to Allard (2006), further jeopardizes this bond, increasing the potential for termination of parental rights. The time limitations of ASFA reduce the time frame available for reunification services, particularly challenging imprisoned parents. Moreover, recognizing that the majority of mothers are convicted on drug-related charges, substance abuse programs are generally prescribed within the case plan as a prerequisite or within the prison sentence as a court imposed stipulation. Aiming to ensure rehabilitation, these programs rely on the quality of service and an adequate length of time, generally requiring more than 15 months for completion (Crossley, 2003; Hairston, 2007; Johnson & Waldfogel, 2002). These constraints have resulted in parental rights termination in 81.5% of cases where parental incarceration is a result of drug offenses (Lee et al., 2005). With an average state prison sentence of 80 months and federal prison sentence of 103 months, considerably longer than ASFA's requisite time limit of 15 months, research has shown the likelihood of meeting reunification requirements within the time constraints is undermined by the mere fact of incarceration (Allard, 2006; Mumola, 2000; Swann & Sylvester, 2006). A termination of parental rights case file review, from 1997 through 2002, found that termination of parental rights is more likely to be granted when parents are incarcerated, with termination decisions in 92.9% of cases of incarcerated mothers (Lee et al., 2005).

Designed to clarify a misinterpretation of reasonable efforts in the preservation and reunification of families and facilitate mobility of a child from foster placement to a permanent adoptive home, risks of legal severance of parental rights among incarcerated



parents resulting from ASFA have become apparent (Hanlon et al., 2007; Lee et al., 2005). The ASFA amendments to the reasonable efforts requirement, similar to the earlier 1980 Child Welfare Act, have failed to give states standards of measurement and a comprehensive definition of reasonable efforts (Crossley, 2003; Zubok, 2004). Child welfare agencies define the basis for adequate service in reasonable efforts to provide for the best interest of the child. Therefore, where research indicates inadequacies of welfare services, addressing the needs of children of incarcerated parents relies on definitive reasonable efforts for ensured support (Beckerman, 1994; Crossley, 2003; Gentry, 1991; Henriques, 1982; McGowan & Blumenthal, 1978; Norman, 1995). On the contrary, through ASFA, the government has offset the financial expenditures of foster care, providing incentives to states for increasing the number of children adopted out (Crossley, 2003; Zubok, 2004). Cost efficiencies at the federal level are offset by costs absorbed by the states' child welfare services, inhibiting the effectiveness of the reasonable efforts requirement in ASFA (Crossley, 2003; Hort, 2001).

Research has instigated further doubt in the successes of ASFA. As the restrictions and incapacitation of imprisonment interfere with successful visitation and reunification, strict time limits have resulted in states' relinquished responsibilities and duties in reunification, thus lightening the burden of the state (Christian, 2009; Crossley, 2003; Hanlon et al., 2007; Hayward & DePanfilis, 2007; Hort, 2001). The addition of an aggravated circumstance clause for suspending reasonable efforts and terminating parental rights, according to Smith and Young (2003) could, for example, be used to declare a child abandoned, due to incarceration, preventing reunification within the prescribed 12 months. Furthermore, the provision for concurrent planning for both termination of parental rights and placement has redirected the focus away from

reasonable efforts in the preservation of the family unit to reasonable efforts for an alternative permanency plan. The amended direction of reasonable efforts is exacerbated by time constraints on reunification services and adoption promotion services (Crossley, 2003; Zubok, 2004).

Although the goal of expedited permanency is systematic reunification in a timely manner, research has shown that when an increase in expedited permanency planning is met through adoption, there is a parallel increase the termination of parental rights (Johnson & Waldfogel, 2002, Swann & Sylvester, 2006; Wilderman & Western, 2010). Enacting legislation on time constraints for the longevity of foster placement, child welfare policies have further heightened the potential for complications (Christian, 2009; Hanlon et al., 2007; Hayward & DePanfilis, 2007). Rigid, time-limited permanency planning policies, Gentry (1998) notes, do not account for circumstances involving parental arrest and incarceration in which parents and children with strong attachments to each other are involuntarily separated.

Incarcerated parents and their children, generally fall victim to two timeline provisions in ASFA. First, in the resolution of placement planning and reunification, ASFA emphasizes the participation in permanency hearings. When issues of reunification and permanent placement are not unresolved, there is an initial petition to terminate parental rights. According to Smith and Young (2003) one of the most significant components of ASFA is the 12 - month time limit for the state to hold the first permanency hearing and petition for termination of parental rights. Given the constrained ability of incarcerated parents to be present and participate in permanency hearings, the probability for parents' rights to be terminated is magnified. Second, with ASFA's time limited guidelines in the maintenance of contact with children, insufficient contact and

visitation serve as grounds for termination of parental rights. Therefore, the combined sentence length and incapacitation of the prison environment, are frequently initiating factors in the petition to terminate parental rights (Hairston, 2007; Halperin & Harris, 2004; Lee et al., 2005).

Research has shown that discretion delegated to states in ASFA, has fostered petitions for termination of parental rights based on a subjective determination of fulfilled reasonable efforts within the specified time limits the child has been the custody of the state. (Johnson & Waldfogel, 2002; Swann & Sylvester, 2006; Zubok, 2004)

Furthermore, this discretion has impacted determination of parental fitness where specific requisites are vague but commonly include abandonment (Bogacki & Weiss, 2007; Dicker, 2009; Swann & Sylvester, 2006; Zubok, 2004). When a child is taken as a ward of the state, it is the duty of the parent to exhibit fitness before reunification is possible. ASFA created tensions between the expectations of parental actions and the ability of the incarcerated parent to exhibit such actions. The expectations set forth are inherently based on the parent's degree of voluntary commitment to the child and cooperation with the agency, both of which are constrained by incarceration (Johnson & Waldfogel, 2002). Referencing Haley (1977), Leonard (1983), and Muhar (1991), previous research reveals that courts have historically considered imprisonment as so called abandonment permitting termination of parental rights, indicating early discretionary uncertainties and the possibility for increase following ASFA. With the average sentence of an incarcerated parent ranging from 80 to 100 months, the non-negotiable length of absences can also provide a compelling justification for the termination of parental rights (Christian, 2009; Lee et al., 2005; Hanlon et al., 2007).

The narrow implications of ASFA have been dualistically held responsible for the astronomical increase in the termination of parental rights, as well as the overall impact on incarcerated parents and their children, between 1997 and 2002 (Allard, 2006). Advocates criticize the 1997 act, claiming its deliberate failure to consider the future welfare of children of incarcerated parents presents a considerable threat to both the children and the family unit (Allard, 2006; Hort, 2001; Laughlin et al., 2008; Seymour, 1998). The lack of funding and attention toward the services of child welfare, specifically the unique needs of incarcerated parents and their children, should be unmistakable (Crossley, 2003; Johnson & Waldfogel, 2002; Swann & Sylvester, 2006; Wilderman & Western, 2010). ASFA inherently limits potential for an enduring, meaningful relationship between previously incarcerated parents and their children (Laughlin et al., 2008).

While results of ASFA are controversial, evidence exists in support of both, the rise and fall in the termination of parental rights among incarcerated parents. A portion of researchers have proposed the number of terminated parental rights in case of incarcerated parents increased following the enactment of ASFA (Christian, 2009; Hanlon et al., 2007; Lee et al., 2005). Lending empirical support, a case review conducted by Lee and colleagues (2005) revealed a 92.9% increase in the termination of parental rights among incarcerated mothers between the 1997 and 2002. Further investigation indicates that those children without the obstacles of incarceration had a 50% greater probability of reunification with their mothers than children of incarcerated mothers (Christian, 2009; Hayward & DePanfilis, 2007; Moses, 2006; Norman, 1995). The diminished possibility for reunification compounded by evidence indicating the likelihood for children of incarcerated mothers to remain in foster care was four times

greater than all other children confirms Moses' (2006) report that this population has a higher probability of remaining in foster care, having never been adopted or reunified with their parents.

Conversely, after examining data from the Adoption and Foster Care Analysis and Reporting System, Hayward and DePanfilis (2007) found no substantial deviations in the rates of reunification between children of incarcerated parents in foster care and those children whose parents were not incarcerated. These unrecognizable differences were confirmed at the state level by Larson and Swanson (2008), reporting the majority of children in the Minnesota child welfare system who were placed in foster care upon parental incarceration were reunified with their parents.

#### State Statutes

Incarceration alone does not sever parental rights. States have conditions and criteria including length of confinement, child's age, quality of the parent-child relationship, pre-incarceration contact with and support of the child, recidivism rate, and cooperation with child welfare agency that further specify state grounds for termination of parental rights. Additionally, some states give discretion to a judge in the decision to terminate an imprisoned parent's legal rights, while others have set more specific limits. At the expiration of time allotted to achieve the reunification requirements of the incarcerated parent, the option of reunification is no longer available and will be removed from the child's permanency plan.

Examining the constitutional standard of clear and convincing evidence and the admissibility of the parent-child relationship, Gentry (1991) reviewed the 50 states' grounds for involuntary termination of parental rights for the unique population of incarcerated parents with children in foster care. Statutes defining procedural rights of the

incarcerated parent and those focusing on the potential for reunification and the pre-incarceration behavior of the parent were analyzed. Three principles of due process were examined (a) the adversarial aspect of the hearing requiring the presence of the parent and appointed counsel (b) the obligation of the state to consider all aspects of the parent's behavioral history and the balance between the expected degree of case plan involvement and the limitations of imprisonment; and (c) the state's focus on the ability of the parent to fulfill parental responsibilities to the utmost cooperation and success rather than placing undue consideration on the length of incarceration.

Using compiled data from the National Clearinghouse on Child Abuse and Neglect Information, Crossley (2003) aimed to develop patterns in the enumeration of definite guidelines for reasonable efforts by reviewing reasonable efforts provisions within the state statutes while Wayne's (2008) research focused on gaining a national perspective on the so called best interest laws. Both researchers categorized statutes according to the level of specificity. Identifying two consistent patterns, Crossley (2003) recognized a stark difference in definitions of reasonable efforts and the states' purposeful limitation on the state's obligation to achieve a particular level of effort. Research revealed either the state's implementation of the federal reasonable efforts provisions without further definition or conversely, employment of language to define the expectation of reasonable efforts, some even prescribing specific services. Wayne (2008) divided the states, according to provisions in their statutes, into two categories based on general or specific criteria for judicial decisions and found extreme variations in the generally defined criterion.

In 2010, an examination of the 50 states termination of parental rights statutes was conducted to assess the inclusion of disability. Lightfoot, Hill, and LaLiberte (2010)

reviewed the statutes for historical and current terminology related to or describing disability. Measuring the inclusion, specificity, proper definition, scope, use of terminology, and suggestive ideas of impairment such as accessibility, Lightfoot and colleagues (2010) concluded that there were legislated disability grounds for termination of parental rights for 37 states, often conditioned in outdated terminology and vaguely defined.

A wide range of policies enacted through ASFA are executed at the state level through statute legislation. Within policy guidelines, the individual states have discretion in defining statutory requirements for grounds for involuntary termination of parental rights and the statutory power to either promote or mitigate the termination of parental rights of incarcerated parents. The variations in grounds for involuntary termination of parental rights further impact the state's disposition. Employing a variation of Lightfoot and colleagues' (2010) methodology, an examination of the 50 states' statutory grounds for involuntary termination of parental rights will individualize the state's propensity for termination in cases of incarceration with consideration of the previously discussed obstacles. Conducted through qualitative content analysis, further investigation will identify commonalities in conditions and criteria and posit recurring obstacles and issues of concern.

## CHAPTER III

### METHODOLOGY

#### Introduction

The legal decision to terminate parental rights, permanently severing the constitutional right of a parent to the care, custody, and management of their child, is defined by statutory law. Through a qualitative content analysis of the fifty states' and the District of Columbia's (D.C.) statutory grounds for involuntary termination of parental rights, this research aims to determine the impact of the state statutes on incarcerated parents in the termination of parental rights.

As the criminal justice system reports a substantial increase in incarceration rates over the past thirty years, the child welfare system reveals a parallel increase in the number of incarcerated parents with children in foster care. Scholars in these fields have expressed their concern, enumerating the challenges faced by incarcerated parents to uphold their constitutional right as a parent due to restrictions of imprisonment (Allard, 2006; Beckerman, 1994, 1998; Gentry, 1991, 1998; Halperin & Harris, 2004; Hayward & DePanilis, 2007; Langlin et al., 2008; Seymour, 1998).

The purpose of this research is to determine the susceptibility of incarcerated parents to the involuntary termination of parental rights by establishing the impact of statutory grounds. The impact is established based on the existence and frequencies of common criteria and conditions limited by imprisonment. Through a content analysis, this study is designed to answer whether the statutory grounds for involuntary termination of parental rights have undue impact on incarcerated parents and their children as a result of the restrictions inherent in incarceration.



### Qualitative Content Analysis

The qualitative nature of content analysis was employed, based on Sofaer's (1999) and Taylor and Bogdan's (1998) valuable application of qualitative research to government documents and policies, and the similarities of both with the content of legal statutes. As a non-numerical examination, qualitative research provides the opportunity to analyze the manifest or physical content, as well as the latent content, through an "interpretative reading of the symbolism underlying the physical data" for a deeper understanding (Berg, 2008, p. 269; Firestone, 1987; Taylor & Bogdan, 1998). Selltiz and colleagues (1959) cite the identifiable character of the data as the most noteworthy factor of qualitative research (Selltiz, Jahoda, Deutsch, & Cook, 1959; as cited in Berg, 2008).

Holsti (1968) defined content analysis as "any technique for making inferences by systematically and objectively identifying special characteristics of messages" (citing Holsti, 1968, p. 608; as cited in Berg, 2008, p. 267). The interpretive nature of content analysis allows for both the breakdown of unobtrusive data, often cited as the most advantageous aspect of content analysis, as well as the opportunity for a systematic comparison (Berg, 2004, 2008; Taylor & Bogdan, 1998).

Based on the focus of the current research, the ability of content analysis to identify the patterns of a document and the focus of public or political opinions, establishes it as the most relevant qualitative research approach (Berg, 2008; Kolbe & Burnett, 1991; Stemler, 2001; Weber, 1990). However, the weaknesses of content analysis must be cautioned. According to Berg (2008), the most crucial weakness of content analysis lies in identifying the obscure messages within the document, potentially obstructing the comprehensiveness of the study (Berg, 2008). Secondly, as content analysis requires rigorous and precise documentation of the procedures, results and

discussion, there is a lack of control over the presentation of analysis and thus an uncertainty in the perception of the viewer (Weber, 1990).

### Data Analysis Techniques

Content analysis is a result of an objective examination of data through the consistent application of explicit rules or criteria of selection (Berg, 2008). Deductively established through an exhaustive review of the literature, analytic categories indicate areas of significance for purposes of the current study (Abrahamson, 1983). Through open coding, additional “grounded categories” inductively emerge (Abrahamson, 1983; Berg, 2008). Strauss (1990) defines open-coding, as a process allowing for an uninhibited initial review of the data to better determine classifications sufficient for variations. These grounded categories have the potential to replicate, evolve, and link the initial analytic categories to the data (Abrahamson, 1983; Berg, 2008; Holsti, 1967).

Once “sufficiently exhaustive to account for variation,” the data is organized into areas of relevance using coding frames (Berg, 2008, p. 266). Based on both the analytic and grounded categories, the criteria for each frame are systematically and objectively established. As the principle coding rules for each category, providing explicit guidance to sort the data accordingly, these “criteria for selection” are “rigidly and consistently applied” to the statutes (Berg, 2008, p. 266).

Aiming to determine the susceptibility of incarcerated parents to the termination of parental rights, the statutory grounds are examined using three of the seven major elements or units of analysis: words, themes, and concepts. Noteworthy, however, the potential for unidentified synonyms within the data has cautioned the measurement of the so called word (Weber, 1990). However, for the purposes of this study, this unit measures the impact of specific ‘words’ in determining an incarcerated parent’s susceptibility to

TPR. Therefore, as literature and case history have indicated an incarcerated parent's vulnerability to the specified statutory language, the chance of discrepancies due to synonyms is eliminated.

This study aims to determine the impact on and susceptibility of incarcerated parents to the termination of parental rights. Through an analysis of the 50 states and the D.C.'s statutory grounds for involuntary termination of parental rights, the existence and frequency of criteria potentially impacting incarcerated parents is documented on a national scale and for the individual states. An incarcerated parent's susceptibility to TPR is determined based on the measured impact, quantifiably established through the existence and frequency of criteria within the statutes at the state and national level.

The strength of the impact for an individual state is established by the number of existent criteria or conditions. The strength of an individual state's impact is also established by the number of substantiated categories. At the national level, the strength of the impact is established across the 50 states and the D.C. by the frequency of each category's existence, as well as the frequency of all categories. Systematically comparing the strength of the impact at both levels, state and national, explains and further supports the determined susceptibility of incarcerated parents to the termination of parental rights.

#### *Data Validation*

Following the validation requirements of Holsti (1969), Lincoln and Guba (1985) and Berg (2008), the analysis is grounded in research, both analytically and methodologically. Further, the criteria for selection were objectively established, and "rigidly and consistently applied" to the statutes, eliminating the possibility of selective examination (Berg, 2008, p. 266). Detailing development and interpretations of this study, three additional techniques enhanced the validation. First, the process, techniques

and procedures are explicitly descriptive, so that a repeated analysis of this content will produce the same or compatible results (Berg, 2008, Lincoln & Guba, 1985). Likewise, an audit trail, or rigorous research notes were maintained, documenting decisions, alterations, additions, and their basis (Berg, 2008; Holsti, 1969; Lincoln & Guba, 1985). Finally, at least three exhaustive excerpts of both manifest and latent content from relevant statutes are provided to exemplify the interpretation of the statutory grounds for purposes of results and discussion (Berg, 2008; Holsti, 1969).

### Data Analysis Procedures

#### *Data Collection*

Data for the content analysis was produced and distributed by Child Welfare Information Gateway, U.S. Department of Health and Human Services, Administration on Children, Youth and Families: Children's Bureau. Current through February 2010, Grounds for Involuntary Termination of Parental Rights for the 50 states and the D.C. were accessed and downloaded from the Child Welfare Information Gateway website (Child Welfare Information Gateway). Six copies of the 50 states' and the D.C.'s statutes were printed. One copy was held in its original condition while the other five were used in coding the data.

#### *Data Reduction*

To analyze the content of states' statutes, for the susceptibility of incarcerated parents to the termination of parental rights, an exhaustive review of the literature was conducted to develop analytic categories of relevance. Three analytic categories were identified: (a) time-sensitive conditions; (b) statutory language prone to judicial discretion in key conditions for termination; and (c) conditional requirements for reunification involving parental participation or overt demonstration of caretaking ability

and interest. Each category was defined according to the literature, based on the cited restrictions due to incarceration and the surrounding specified obstacles. In determining the impact on and susceptibility of incarcerated parents to the termination of parental rights, each state's statute was analyzed for these criteria.

### *Time-sensitive conditions*

While research indicates the arrest and sentencing period alone can be detrimental to a parent-child relationship, the constraints of incarceration were magnified by the Adoption and Safe Families Act (ASFA) of 1997. Enacted to reduce the foster care population, the provisions of ASFA emphasized the importance of permanency among foster children though restrictive timeframes and unyielding judicial discretion (Crossley, 2003; Hairston, 2007).

Although allowing for exceptions, two of the most significant components of ASFA expedited the traditional permanency plan timelines. Initially, the act mandated a permanency hearing within 12 months of a child's placement in foster care, reinforcing this with a second mandate to petition for TPR after the child has been in foster care for 15 of the most recent 22 months (Dicker, 2009; Hanlon, Carswell, & Rose, 2007; Hort, 2001; Phillips & Bloom, 1998; P.L. 105-89; Smith and Young, 2003; Swann & Sylvester, 2006).

With the average prison sentence between 80 and 100 months, considerably longer than ASFA's requisite time limit of 15 months, research has shown the likelihood of reunification is undermined by the mere fact of incarceration (Allard, 2006; Mumola, 2000; Swann & Sylvester, 2006). Limited to the services available in prison, the restrictive timeframe also diminishes an incarcerated parent's opportunity to fulfill the requisite criteria necessary for reunification (Crossley, 2003; Hairston, 2007; Johnson &

Waldfoegel, 2002). Moreover, recognizing that a large portion of incarcerated parents are convicted on drug-related charges, substance abuse programs typically require more than 15 months for completion (Crossley, 2003; Hairston, 2007; Johnson & Waldfoegel, 2002). Analytic criteria were established to examine the time-sensitive conditions impacting the inherent restrictions of incarcerated parents. According to the literature the frequency and impact of time-sensitive conditions within the state statutes is based on the existence of a permanency hearing mandate, a mandate to petition for the termination of parental rights, indication of a time frames for reunification services, a waiver of reasonable efforts, indication of incarceration, and the possibility of an exception to ASFA guidelines.

*Statutory language prone to judicial discretion in key conditions for termination*

Research on cases resulting in the termination of an incarcerated parent's rights has consistently revealed courtroom approaches or schemes inducing vulnerability to termination. The most frequent and current approach finds the child to be so called neglected or abandoned based on the longevity of the prison sentences, the non-negotiable length of absences, and/or the confines of prison (Barry, Ginchild, & Lee, 1995; Gentry, 1991; Haley, 1977; Leonard, 1983; Muhar, 1991). Referencing Haley (1977), Leonard (1983), and Muhar (1991), courts have historically considered imprisonment as so called abandonment permitting termination of parental rights.

Although all parents are constitutionally entitled to a hearing of parental fitness prior to custody deprivation (*Stanley v. Illinois*, 1972), the most controversial approach uses involuntary consent to waive parental rights, finding abandonment, or parental unfitness, or the termination to be in the best interest of the child (Haley, 1977; Leonard, 1983; Muhar, 1991;). As a determination of so called unfitness is case specific, Barone and colleagues (2005) and Friedelbaum (2005) cited five ambiguous areas of

consideration. The individual sufficiency of cognitive functioning, emotional functioning and behavioral history are evaluated and then comprehensively applied in determining the ability of the parent to effectively raise a child. The final consideration assesses the parent's demonstrated motivation to maintain a parent-child relationship (Barone, Weitz, & Witt, 2005; Friedelbaum, 2005). While case precedent indicates imprisonment itself does not constitute unfitness, these five areas of consideration are vaguely defined and particularly vulnerable to judicial discretion. Courts have ruled ability to "maintain a place of importance in the child's life" is suitable criteria for determining parental fitness in cases of parental incarceration. As such, the fourth and fifth considerations are debated concerns (Barone et al., 2005; Friedelbaum, 2005; Gentry, 1998; *In re Adoption of Sabrina*, 1984, p. 627). A dissenting judge in *In re Diana P.* (2005) exemplifies the discretionary vulnerabilities in the termination of parental rights, stating, "A child may be taken away from a parent, in the best interests of the child and for reasons that have nothing to do with unfitness of that parent. At the expiration of one year, a parent may have his or her parental rights terminated absent any particularized showing of unfitness, simply because he or she cannot satisfy the conditions set by the trial court" (as cited in Marsh, 2005, p. 77).

While circumstances such as reasonable efforts, parental fitness, and the best interest of the child are ambiguously defined, the state courts' authoritative discretion was strengthened with the enactment of ASFA (Dicker, 2009; Skinner & Kohler, 2002; Swann & Sylvester, 2006; Zubok, 2004). Research has shown that the reinforced discretion has fostered petitions to terminate parental rights based on a subjective determination of fulfilled reasonable efforts within the limited time frames (Johnson & Waldfogel, 2002; Swann & Sylvester, 2006; Zubok, 2004). Additionally, ASFA included

an aggravated circumstance clause allowing for a waiver of reasonable efforts and terminating parental rights. Statutorily delegated, this clause has been evidenced by grounds of abandonment and neglect, thus increasing an incarcerated parent's vulnerability (Smith & Young, 2003).

Further, contrary to presumptively beneficial authority of the court, serving as the ultimate decision-maker as to the best interest of the child, research has concluded the ambiguously defined child's best interest enables courts and social workers to find insufficiencies in the fulfillment of parental prerequisites. These findings of insufficiencies both facilitate the termination of the caseworker's reasonable efforts as well as parental rights (Crossley, 2003; Dalley, 2002; Gentry, 1991; Leonard, 1983). Statutory language or terminology is vaguely defined for the purpose of judicial discretion and thus capable of influencing the susceptibility of incarcerated parents to TPR. A review of the literature reveals a synthesized list of statutory language prone to judicial discretion in key conditions during the process in terminating parental rights. Reflective of this language are the following words, phrases and concepts: reasonable efforts, parental fitness or unfitness, best interest of the child, abandoned or abandonment, neglect, or aggravated circumstances.

*Conditional requirements for reunification involving parental participation or overt demonstrations of caretaking ability and interest*

Characterized by the distant location, harsh security, indefinite confinement, strict policies, procedures and regulations and unsympathetic environment; correctional facilities deter and diminish a parent's opportunity for reunification. Set forth in the case-specific permanency plan, a parent's reunification is based on the fulfillment of conditional requirements including contact, visitation, continual parent-child bond,



rehabilitation services, as well as demonstrated interest and ability to assume custody. For an incarcerated parent, the atmosphere, confinement, and inconvenience of prison hinder the compliance and completion of these criteria (Block & Potthast, 1998; Clark, 1995; Gentry, 1998; Leonard, 1983; Seymour, 1998).

Maintaining healthy, continuous interaction is essential to the parent's fulfillment of the prescribed permanency plan prerequisites. Both contact and particularly visitation are determining factors in the court's assessment process for establishing evidenced parental fitness (Allard, 2006; Beckerman, 1998; Gentry, 1998; Halperin & Harris, 2004; Langlin, Arrigo, Blevin, & Coston, 2008). Researchers indicate consistent parent-child contact and visitation is paramount to the likelihood and success of reunification following release (Davis, Landsverk, Newton, & Ganger, 1996; Hanlon et al., 2007; Hayward & DePanilis, 2007; Johnston, 1995b; Myer, Smarsh, Amlund-Hagen, & Kennon, 1999; Thompson & Harm, 2000).

Working against the ability of not only the parent to maintain this crucial relationship but the children and caseworkers as well, the importance of contact and visitation is undermined by the obstacles inherent to incarceration (Beckerman, 1998; Bloom & Steinhart, 1993; Christian, 2009; Crossley, 2003; Gentry, 1998; Seymour, 1998). Beyond the isolated location, visitation is fraught with strict security and safety policies, and rules as well as harsh surroundings. Likewise, policies, procedures and regulations completely control the flow of mail and telephone calls (Block & Potthast, 1998; Clark, 1995; Gentry, 1998; Leonard, 1983; Seymour, 1998).

While the extended period of separation threatens the maintenance of a beneficial parent-child relationship, the confines of prison place the prospect of visitation and contact at the will of the correctional facilities and child welfare agencies. Consequently,

with studies showing insufficient opportunity and scant cooperation from both the criminal justice and child welfare systems, an incarcerated parent's potential for reunification is further reduced (Barry, 1985a, 1985b; Beckerman, 1994; Crossley, 2003; Gentry, 1991; Hairston, 2009; Halperin & Harris, 2004; Hanlon et al., 2007; Henrique, 1982; Laughlin et al., 2008; Seymour, 1998).

A mother's access to and involvement in child welfare services is critical to reunification. These services include rehabilitation, parenting or vocational classes, visitation programs, as well as communication outlets to critical knowledge such as the assigned caseworker, permanency planning prerequisites, notification of court dates and the court's expectations. However, the limited availability of services within the confines of prison greatly diminishes an incarcerated parent's ability to meet the typical prerequisites delineated in a permanency plan (Barry, 1985a, 1985b; Beckerman, 1994, 1998; Bloom, 1995; Crossley, 2003; Gentry, 1991, 1998; Hairston, 2007, 2009; Hanlon et al., 2007; Henriques, 1982; Johnston, 1995a; Myers et al., 1999; Seymour, 1998).

An imprisoned parent's reunification is highly dependent upon rehabilitation and efforts toward self improvement. Prerequisite conditions typically include participation and completion of substance abuse treatment, counseling, vocational classes and/or parenting education. Recognizing the population, however, self improvements are required of many inmates for various reasons, thus restricting the availability of services (Beatty, 1997; Beckerman, 1998; Luke 2002; Myers et al., 1999; Seymour, 1998). The constraints of prison also limit the incarcerated parent's ability to demonstrate to not only applicable parenting skills but motivation to assume the responsibility of the child. Where parenting skills are gained and exemplified from the available services, motivation is demonstrated by the parent's overall effort including the number of contacts and

visitations, cooperation with child welfare professionals, as well as voluntary gestures in cooperation with and outside of case plan requirements. Like the limited availability of services, the incapacitation of imprisonment severely impedes even basic demonstrations of motivation, almost eliminating any voluntary element (Beckerman, 1998; Halperin & Harris, 2004; Seymour, 1998).

Further, an incarcerated parent's participation in the permanency plan is most visible and influential through the appearance and involvement in court review hearings. However, the incapacitation of prison leaves the parent completely dependent upon the caseworker for judicial notifications such as hearing dates, transportation notifications, and court orders requesting appearance. In addition to facilitating the court appearances, again the imprisoned parent is dependent on the caseworker to be informed of any additions or revisions to the case plan expectations, as well as opportunities for fulfillment (Beckerman, 1994, 1998; Christian, 2009; Luke, 2002; Nickel, Garland, & Kane, 2009; Seymour, 1998; Wright & Seymour, 2000).

Although grounded in the literature, the category of conditional requirements for reunification references broad circumstances and thus must be open to understanding the concept of these circumstances. In determining the existence of conditional requirements for reunification involving parental participation or overt demonstrations of caretaking ability and interest the following phrases were considered: permanency plan participation; participation in court procedures; participation in services; rehabilitative participation; demonstration of motivation or fitness; contact and visitation; and reasonable efforts.

Through comprehensive and iterative review of the statutes using open coding, the three analytic categories were reorganized and augmented, resulting in four

overarching themes. These four themes incorporate 16 dimensions, or conditions and criteria with the potential to impact the susceptibility of incarcerated parents to the termination of parental rights. Four thematic analyses were conducted of the 50 states' and the D.C.'s statutory grounds. The substantiated dimensions of each theme were rigorously documented in an Excel spreadsheet by states. In addition to the four themes, three constructs were identified. While the conditions and criteria, coded in themes and supporting dimensions, establish the legal basis to terminate a parent's rights, the constructs have the potential to further influence the court's final decision to terminate. The three constructs were considered throughout the thematic analyses and documented accordingly.

This research sought to determine the impact on and susceptibility of incarcerated parents to the termination of parental rights. The impact for an individual state is established in two ways, the number of dimensions evidenced per theme, and the number of substantiated themes within the state's statutes. A theme is established by the existence of at least one of its corresponding dimensions. The impact at the national level is established by the frequency of a theme's existence across the 50 states and the D.C.

In establishing the susceptibility of incarcerated parents to the termination of parental rights, this study proposed the following question: Do the statutory grounds for involuntary termination of parental rights have undue impact on incarcerated parents and their children as a result of the restrictions inherent in incarceration? Undue impact is established at the national level and substantiated by the existence of four themes in states' statutory grounds.

*Limitations*

The descriptive nature of the current research presents limitations that must be cautioned. In determining the susceptibility of an incarcerated parent to the termination of parental rights, the frequency and percentage generalizations at the conclusion of the analysis are limited, as this study was based on the Grounds for Involuntary Termination of Parental Rights, February 2010, prepared by Child Welfare Information Gateway, U.S. Department of Health and Human Services, Administration on Children, Youth and Families: Children's Bureau. Every attempt has been made to be as thorough as possible. As the circumstances, exercise of discretion and judicial determinations are case-specific and unaccounted for in the statutes, there is insufficient data to establish causality between the findings of this study and the outcome of termination of parental rights proceedings. Additional information may also be located in other sections of a state's code, agency regulations, and case law, and is likewise unaccounted for. Due to the subjectivity of the analysis, the current study lacks inter-rater reliability. In efforts to control for this, objective measures were utilized when available, although some subjectivity is still plausible.

## CHAPTER IV

### RESULTS

#### Introduction

Statutory grounds for involuntary termination of parental rights for the 50 states and the District of Columbia were analyzed. Specifically, the most recent statutes (2010) were examined to determine the impact on incarcerated parents and their susceptibility to termination of their parental rights. The findings of the analysis address the impact at the state and national levels and establish the susceptibility of incarcerated parents answering the following question: Do the statutory grounds for involuntary termination of parental rights have undue impact on incarcerated parents and their children as a result of the restrictions inherent in incarceration?

An exhaustive review of the literature revealed 3 analytic grounds to consider in determining an incarcerated parent's susceptibility to the statutory grounds for involuntary termination of parental rights. The following 3 categories are substantiated in the literature: (a) time sensitive conditions; (b) statutory language prone to judicial discretion in key conditions for termination; and (c) conditional requirements for reunification involving parental participation or overt demonstration of caretaking ability and interest.

#### *Themes and Dimensions*

Through open coding, the analytic categories were reorganized and developed to incorporate patterns and classifications within the statutory grounds. Collectively, the analytic and grounded categories revealed the following 16 conditions and criteria, or *dimensions*: (1) *Abandon*; (2) *Dependent*; (3) *Unfit*; (4) *Neglect*; (5) *Child's Best Interest*; (6) *Period of Incarceration*; (7) *Time limitations of ASFA*; (8) *Displacement Period*; (9)

*Remedial Opportunity Timeframe; (10) Permanency Plan-Reasonable Efforts; (11) Visitation and Contact; (12) Ability and Interest; (13) Address Circumstances; (14) Incarceration within Combined Grounds; (15) Vaguely Defined Conviction; and (16) Incarceration as a Ground.*

These 16 dimensions created four overarching classifications. The four classifications or *themes* are (a) *Judicial Discretion*; (b) *Longevity of Time-Sensitive Conditions*; (c) *Requisite Criteria*; and (d) *Legislation of Incarceration*. Table 1 presents the 4 themes and their substantiating dimensions

Table 1

*Themes and Dimensions*

| Themes                                 | Dimensions  |
|--|---|
| Judicial Discretion                    | Abandon<br>Dependent<br>Unfit<br>Neglect<br>Child's Best Interest   |
| Longevity of Time Sensitive Conditions | Period of Incarceration<br>Time Limitations of ASFA<br>Displacement Period<br>Remedial Opportunity Timeframe  |
| Requisite Criteria                     | Permanency Plan-Reasonable Efforts<br>Visitation and Contact<br>Ability and Interest<br>Address Circumstances |
| Legislation of Incarceration           | Incarceration with Combined Grounds<br>Vaguely Defined Conviction<br>Incarceration as a Ground                |

Notably, open coding revealed the identification of specific crimes. For the purposes of this research these were not addressed. Additionally, open coding revealed the potential for a single ground to substantiate more than one dimension or theme as many states have legislated multiple conditions and criteria within a single ground. Defined by the states, both the basis for termination and the combination of conditions and criteria vary among the states. For the majority of the states, the combined circumstances are contained in a sentence separated by a combination of the words, or/and, or are listed, prefaced with a specific condition or criteria requirement. For the purposes of this research, each dimension will be counted. To ensure validation of the findings, the entire ground, inclusive of the additional impacting dimension, is evidenced in the substantiated dimensions. Likewise, the exemplary state codes provided in this chapter evidence the entire ground.

### *Constructs*

The initial review of the statutory grounds also revealed three extended *constructs*. Like the four themes, the following three constructs have the potential to influence the susceptibility of incarcerated parents to TPR: (a) Aggravated Circumstances (b) ‘May’ or ‘Shall’ as the basis for Termination (c) Exceptions to the Statutory Grounds. Legislatively, however, these constructs stipulate the court’s consideration of specifics in the decision to terminate parental rights. Considering the influence of the statutory language, the state’s discretionary power and the statutory dimensions or basis for termination, each construct has the potential to either diminish or increase an incarcerated parent’s susceptibility to the termination of parental rights.

*Aggravated Circumstances.* *Aggravated Circumstances* is typically assigned to the more severe statutory grounds, waiving the state’s duty to provide reasonable efforts.



As a provision of the 1997 ASFA, the legislation and legal basis of the waiver is defined by the state. Expediting the timeframe for reunification, a state's allocation of aggravated circumstances to statutory grounds impacting incarcerated parents has the potential to augment their susceptibility to the termination of parental (Hort, 2001; P.L. 105-89).

Based on the literature and grounded in the data, the statutory grounds for involuntary termination of parental rights were analyzed for the influence of *Aggravated Circumstances*. More specifically, the statutory grounds impacting incarcerated parents were examined throughout the four thematic analyses for the phrase, *Aggravated Circumstances*. Notably, the findings are documented and referenced with each theme according to the state and dimension evidencing the construct. Due to statutory variations, *Aggravated Circumstances* has the potential to be substantiated in multiple dimensions and themes.

*'May' or 'Shall' as the basis for Termination.* The terminology within the state statutes has the potential to influence the court's discretionary authority and impact of a judge's determination. An important distinction lies within the language prefacing the state's basis for termination. For those grounds prefaced with "may", the termination is simply allowed. Conversely, the statutory language mandates the termination when "shall" prefaced the ground (Garner, 1995). Therefore, although based on statutory grounds and influenced by the court's discretionary authority, the determination of the state may also be profoundly influenced by this terminology. Likewise, the legislation of "Shall" and "May", has also distinguished between those circumstances that require consideration prior to a determination, versus those that are optional.

Analytically and statutorily grounded, *'May' or 'Shall' as the Basis for Termination*, was singularly considered through an analysis of the 50 states and the

District of Columbia. Likewise, the findings were separately addressed and documented. For the purposes of this research, only the words, may or shall, directly prefacing and singly referring the termination of parental rights were documented. However, the exemplary state codes provided in this chapter include the language indicating whether the consideration of the dimension is mandatory or optional.

*Exceptions to the Statutory Grounds.* *Exceptions to the Statutory Grounds* was recently addressed in the 1997 ASFA. Grounded in one of the most significant components of ASFA, three circumstantial exceptions were delegated to the termination mandate after a child's place in foster care for the 15 of the most recent 22 months (Hort, 2001; P.L. 105-89). *Exceptions to the Statutory Grounds* evidences the states' authority to define exceptions to the statutory grounds for involuntary termination of parental rights. With the potential to diminish an incarcerated parent's susceptibility to TPR, this construct addresses the legislated exceptions to the statutory grounds for involuntary TPR, which influence an incarcerated parent's susceptibility and the extent to which states have legislated these exceptional circumstances. These exceptions are both analytically defined and grounded in the data. *Exceptions to the Statutory Grounds* was singularly considered through an analysis of the 50 states and the District of Columbia. Likewise, the findings are addressed and documented separately.

#### Judicial Discretion

The first theme is *Judicial Discretion*. Based on the analytical category, *statutory language prone to judicial discretion in key conditions for termination*, there are five dimensions to *Judicial Discretion*: (a) *Abandon*; (b) *Dependent*; (c) *Unfit*; (d) *Neglect*; and (e) *Child's Best Interest*. These dimensions were solely developed based on literature and case history.

According to existing literature, these five circumstances largely contribute to the vulnerability of incarcerated parents to have parental rights terminated (Barry, Ginchild, & Lee, 1995; Gentry, 1991; Haley, 1977; Leonard, 1983; Muhar, 1991). Ambiguously defined, these dimensions are often applied at the judge's discretion and substantiate a variety of circumstances (Haley, 1977; Leonard, 1983; & Muhar, 1991).

The courts have historically considered incarceration as abandonment, neglect, or the cause for a so called dependent child. Likewise, the state's strengthened discretionary power has enabled the court to find insufficiencies based solely on the incarceration of the parent, citing the child's best interest or parental fitness (Dicker, 2009; P.L. 105-89; Skinner & Kohler, 2002; Swann & Sylvester, 2006).

#### *Thematic Question 1 - Judicial Discretion*

As the juvenile court system is characterized by significant judicial discretion, to what extent does the language of the statute allow for judicial discretion?

#### *Analysis*

The dimensions of *Judicial Discretion* reflected the literature and, therefore, no variations were considered. The frequency and impact of *Judicial Discretion* was determined based on the identification of the following words and phrases in the state's statutory grounds: (a) *Abandon* - abandoned or abandonment; (b) *Dependent* - dependent; (c) *Unfit* - unfitness or parental fitness; (d) *Neglect* - neglect; and (e) *Child's Best Interest* - child's best interest or best interest of the child. More specifically, the dimensions *Abandon*, *Unfit*, and *Neglect* were identified by the root word. The results of this analysis are presented in Table 2.

## Results

*Neglect* (N = 38) and *Abandon* (N = 47) were each indicated in over 75% of the statutory grounds. Only five states, however, included *Dependent*. These were Arkansas, California, Colorado, Florida, and Washington. Nearly one-third (N = 15) of the state codes legislated *Unfit*, as illustrated in statutes for Kansas and Minnesota.

Kansas Ann. Stat. §§ 38-2269; 38-2271: The court may terminate parental rights when it finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition that makes the parent unable to care properly for a child, and the conduct or condition is unlikely to change in the foreseeable future (p.23).

Minnesota Ann. Stat. §§ 260.012; 260C.301: The juvenile court may, upon petition, terminate all rights of a parent to a child if it finds that one or more of the following conditions exist: The parent is found to be unfit because he or she is unable, for the reasonably foreseeable future to care appropriately for the ongoing physical, mental, or emotional needs of the child (p. 31).

Table 2

### *Judicial Discretion Dimensions in Statutory Grounds by State*

| Judicial Discretion - Dimensions |         |           |           |         |                       |       |
|----------------------------------|---------|-----------|-----------|---------|-----------------------|-------|
| States                           | Abandon | Dependent | Unfitness | Neglect | Child's Best Interest | Total |
| Alabama                          | X       |           |           | X       |                       | 2     |
| Alaska                           | X       |           |           | X       |                       | 2     |
| Arizona                          | X       |           | X         | X       | X                     | 4     |

Table 2 (continued).

| Judicial Discretion - Dimensions |         |           |           |         |                       |       |
|----------------------------------|---------|-----------|-----------|---------|-----------------------|-------|
| States                           | Abandon | Dependent | Unfitness | Neglect | Child's Best Interest | Total |
| Arkansas                         | X*      | X         |           | X       | X                     | 4     |
| California                       |         | X         | X         | X       |                       | 3     |
| Colorado                         | X       | X         | X         | X       |                       | 4     |
| Connecticut                      | X       |           |           |         |                       | 1     |
| Delaware                         | X       |           |           | X       | X                     | 3     |
| Wash. D.C.                       | X       |           |           |         | X                     | 2     |
| Florida                          | X       | X         |           | X       |                       | 3     |
| Georgia                          | X*      |           |           | X       | X                     | 3     |
| Hawaii                           | X*      |           | X*        |         |                       | 2     |
| Idaho                            | X       |           |           |         | X                     | 2     |
| Illinois                         | X*      |           | X         | X       |                       | 3     |
| Indiana                          | X       |           |           |         |                       | 1     |
| Iowa                             | X*      |           |           | X       |                       | 2     |
| Kansas                           | X       |           | X         | X       |                       | 3     |
| Kentucky                         | X       |           |           | X       | X                     | 3     |
| Louisiana                        | X       |           |           | X       |                       | 2     |
| Maine                            | X       |           |           |         | X                     | 2     |
| Maryland                         | X       |           |           |         |                       | 1     |

Table 2 (continued).

| Judicial Discretion - Dimensions |         |           |           |         |                       |       |
|----------------------------------|---------|-----------|-----------|---------|-----------------------|-------|
| States                           | Abandon | Dependent | Unfitness | Neglect | Child's Best Interest | Total |
| Massachusetts                    | X       |           | X         | X       | X                     | 4     |
| Michigan                         |         |           |           | X       |                       | 1     |
| Minnesota                        | X       |           | X         | X       |                       | 3     |
| Mississippi                      | X*      |           |           | X       |                       | 2     |
| Missouri                         | X       |           |           | X       |                       | 2     |
| Montana                          | X*      |           | X         | X*      | X                     | 4     |
| Nebraska                         | X*      |           | X         | X       | X                     | 4     |
| Nevada                           | X       |           | X         | X       | X                     | 4     |
| New Hampshire                    | X       |           |           | X       |                       | 2     |
| New Jersey                       | X*      |           |           | X       |                       | 2     |
| New Mexico                       | X       |           |           | X       |                       | 2     |
| New York                         | X       |           |           | X*      |                       | 2     |
| North Carolina                   | X       |           |           | X       |                       | 2     |
| North Dakota                     | X*      |           |           |         |                       | 1     |
| Ohio                             | X       |           |           | X       | X                     | 3     |
| Oklahoma                         | X       |           |           | X       |                       | 2     |
| Oregon                           | X       |           | X         | X       |                       | 3     |
| Pennsylvania                     |         |           |           | X       |                       | 1     |

Table 2 (continued).

| Judicial Discretion - Dimensions |         |           |           |         |                       |       |
|----------------------------------|---------|-----------|-----------|---------|-----------------------|-------|
| States                           | Abandon | Dependent | Unfitness | Neglect | Child's Best Interest | Total |
| Rhode Island                     | X*      |           |           | X       |                       | 2     |
| South Carolina                   | X       |           |           | X       | X                     | 3     |
| South Dakota                     | X       |           |           | X       |                       | 2     |
| Tennessee                        | X       |           |           | X       | X                     | 3     |
| Texas                            | X       |           |           |         |                       | 1     |
| Utah                             | X       |           | X         | X       |                       | 3     |
| Vermont                          |         |           | X         |         |                       | 1     |
| Virginia                         | X       |           |           |         |                       | 1     |
| Washington                       | X*      | X         |           |         | X                     | 3     |
| West Virginia                    | X*      |           |           | X       |                       | 2     |
| Wisconsin                        | X       |           |           |         |                       | 1     |
| Wyoming                          | X       |           | X         | X       |                       | 3     |

The extent of subjectivity within the statutory grounds is exemplified in Illinois and four other states (Colorado, Massachusetts, Oregon, Utah), when a parent's unfitness is substantiated by another dimension of discretion.

Illinois Comp. Stat. Ch. 705, § 405/1-2; Ch 750, § 50/1: The grounds of unfitness are any one or more of the following: The parent has abandoned the child. The parent has substantially and continuously or repeatedly neglected the child (p. 20).

Every state has evidenced at least one dimension of *Judicial Discretion*, establishing the existence of the theme in the 50 states and D.C. Recognizing that all five dimensions impact incarcerated parents, no state indicates all five dimensions within the grounds to terminate parental rights. Seven states, however, have substantiated four of the five dimensions as grounds. These are Arizona, Arkansas, Colorado, Massachusetts, Montana, Nebraska, and Nevada.

Colorado is the only state, to include all five dimensions. Notably, the substantiated dimension of *Child's Best Interest* is addressed in the Colorado's statute as an exception. *Child's Best Interest* is the only dimension within *Judicial Discretion* to be identified as both a ground and exception.

Illustrative of the *Child's Best Interest* as a ground, Georgia and Kentucky, are provided below.

Georgia Ann. Code §§ 15-11-58; 15-11-94: The court may terminate a parent's parental rights when there is clear and convincing evidence of parental misconduct or inability, and the court finds that such termination is in the best interests of the child (p. 17).

Kentucky Rev. Stat. § 625.090: In determining the best interests of the child and the existence of a ground for termination, the court shall consider the following factors: The efforts and adjustments the parent has made in his or her circumstances, conduct, or conditions to make it in the child's best interests to return home within a reasonable period of time (p. 25).

Like Colorado, 24 other states suffice this dimension with an exception.

Colorado Rev. Stat. § 19-3-604: A petition to terminate parental rights will be filed when the child has been in foster care for 15 of the most recent 22 months



unless: The department has documented in the case plan that such motion would not be in the best interests of the child (p. 13).

Furthermore, of those 25 states, five states (District of Columbia, Maine, Massachusetts, Nebraska, Tennessee) demonstrate *Child's Best Interest* with both an exception as well as a ground.

With 15 of the 50 states and D.C. indicating aggravated circumstances within a dimension of *Judicial Discretion*, 13 assign the waiver of reasonable efforts to a ground based on *Abandon* as indicated in Iowa and New Jersey.

Iowa - Ann. Stat. §§ 232.102; 232.111; 232.116: The court may waive the requirement for making reasonable efforts when it determines that aggravated circumstances exist, as indicated by any of the following: The parent has abandoned the child (p. 22).

New Jersey - Ann. Stat. §§ 30:4C-11.2; 30:4C-15: A petition to terminate parental rights shall be filed when there is evidence of one or more of the following: The parent has subjected the child to aggravated circumstances of abuse, neglect, cruelty, or abandonment (p. 38).

#### Longevity of Time Sensitive Conditions

The second theme is *Longevity of Time Sensitive Conditions*. Based on the analytic category, *time-sensitive conditions*, there are four dimensions to *Longevity of Time Sensitive Conditions*: (a) *Period of Incarceration*; (b) *Time Limitations of ASFA*; (c) *Displacement Period*; and (d) *Remedial Opportunity Timeframe*. These dimensions incorporate conditions referenced in the literature, as well as conditions grounded in the data.

As research indicates an incarcerated parent's most current and frequent vulnerability to TPR is based on the longevity of the prison sentences, the variations on release dates and confines of prison. *Longevity of Time Sensitive Conditions* is based on the incongruities between these aspects of incarceration and the conditional timeframes of ASFA (Barry et. al, 1995; Beckman, 1998; Gentry, 1991; Hairston, 1991; Leonard, 1983; Muhar, 1991). As the average prison sentence is 90 months, this period of incarceration is considerably longer than ASFA's two timeline provisions mandating, a permanency hearing in the first 12 months of a child's placement in foster care, and a petition to terminate after 15 months (Dicker, 2009; Hanlon, Carswell, & Rose, 2007; Hort, 2001; Phillips & Bloom, 1998; P.L. 105-89; Swann & Sylvester, 2006). Research has also shown the likelihood of meeting reunification requirements within these time constraints is greatly diminished by the confines of prison (Crossley, 2003; Johnson & Waldfogel, 2002; Mumola, 2000; Swann & Sylvester, 2006). Furthermore, citing well-being and healthy development of the child, the non-negotiable length of absence has the potential to provide a compelling justification to terminate parental rights (Lee et al., 2005; Hanlon et al., 2007).

#### *Thematic Question 2: Longevity of Time Sensitive Conditions*

Does the longevity that is inevitable with incarceration affect an incarcerated parents' susceptibility to TPR?

#### *Analysis*

Analytically based and grounded in the literature, the four dimensions to *Longevity of Time Sensitive Conditions* are evidence by the following conditions: (a) *Period of Incarceration* - identifying a sentence length or a period of parental absence due to incarceration; (b) *Time Limitations of ASFA* - identifying the 15 of the most recent

22 month mandate; (c) *Displacement Period* - identifying specific a period of parental absence or the duration of a child's placement in foster care; and (d) *Remedial Opportunity Timeframe* – identifying time periods for case plan requirements such as visitation, contact, ability and interest to assume custody, or the care and support of the child.

Grounded in the data, the dimensions to *Longevity of Time Sensitive Conditions* have the potential to be legislated based on the age of the child. The ground for each evidenced dimension will be further examined for the potential reference to the age of the child. Those grounds referencing the child's age will be documented according to the substantiate dimension and state. Note, only the ground's reference to the child's age will be documented. However, the exemplary state codes provided for this theme have the potential to cite the child's legislated age. The results of this analysis are presented in Table 3.

### *Results*

While *Longevity of Time Sensitive Conditions* has the potential to produce the most subjective determinations in the termination of parental rights, almost one-half of the states have legislated *Time Limitations of ASFA* (N = 24), *Displacement Period* (N = 23), and/or *Remedial Opportunity Timeframe* (N = 27). Although falling short of 50%, 16 states have set forth a *Period of Incarceration* in their grounds. Variations in legislated expiration periods as well as the contextual surroundings are illustrated below.

Iowa: Ann. Stat. §§ 232.102; 232.111; 232.116: The court may terminate a parent's rights on any of the grounds listed above. The court also may terminate parental rights for any of the following: The parent is incarcerated for a crime

against a child or is unlikely to be released from prison for 5 or more years (p. 22).

Ohio: Rev. Stat. § 2151.414 : A court may terminate parental rights if it finds, by clear and convincing evidence, that it is in the best interests of the child and that any of the following apply: The parent is incarcerated and will not be available to care for the child for at least 18 months (p. 44).

Texas: Fam. Code §§ 161.001; 161.002(b); 161.007: The court may order termination parental rights if the court finds by clear and convincing evidence that the parent has: Been incarcerated and unable to care for the child for two years (p. 55).

Utah: Ann. Code §§ 78A-6-507; 78A-6-508: In determining whether a parent is unfit or has neglected a child, the court shall consider, but is not limited to, the following circumstances, conduct, or conditions: Incarceration of the parent for such a time that the child will be deprived of a normal home for more than 1 year (p. 56).

Table 3

*Longevity of Time Sensitive Conditions Dimensions in Statutory Grounds by State*

| Longevity of Time Sensitive Conditions - Dimensions |                         |                          |                     |                                |       |
|---|-------------------------|--------------------------|---------------------|--------------------------------|-------|
| States  | Period of Incarceration | Time Limitations of ASFA | Displacement Period | Remedial Opportunity Timeframe | Total |
| Alabama   |                         | X                        |                     |                                | 1     |

Table 3 (continued).

| Longevity of Time Sensitive Conditions - Dimensions |                         |                          |                     |                                |       |
|---|-------------------------|--------------------------|---------------------|--------------------------------|-------|
| States  | Period of Incarceration | Time Limitations of ASFA | Displacement Period | Remedial Opportunity Timeframe | Total |
| Alaska  |                         | X                        |                     |                                | 1     |
| Arizona   | X                       |                          | X                   |                                | 2     |
| Arkansas  | X                       |                          | X                   |                                | 2     |
| California  |                         |                          |                     | X                              | 1     |
| Colorado  | X                       | X                        |                     |                                | 2     |
| Connecticut   |                         | X                        | X                   |                                | 2     |
| Delaware  |                         |                          | X                   | X                              | 2     |
| Wash. D.C.  |                         | X                        |                     |                                | 1     |
| Florida   | X                       |                          |                     | X                              | 2     |
| Georgia   |                         |                          |                     | X                              | 1     |
| Hawaii  |                         |                          |                     | X                              | 1     |
| Idaho   | X                       |                          |                     |                                | 1     |
| Illinois  |                         | X                        |                     | X                              | 2     |
| Indiana   |                         | X                        |                     |                                | 1     |
| Iowa  | X                       | X                        | X                   |                                | 3     |
| Kansas  |                         |                          | X                   | X                              | 2     |
| Kentucky  |                         | X                        | X                   | X                              | 3     |

Table 3 (continued).

| Longevity of Time Sensitive Conditions - Dimensions |                         |                          |                     |                                |       |
|---|-------------------------|--------------------------|---------------------|--------------------------------|-------|
| States  | Period of Incarceration | Time Limitations of ASFA | Displacement Period | Remedial Opportunity Timeframe | Total |
| Louisiana   | X                       |                          |                     | X                              | 2     |
| Maine   |                         |                          | X                   |                                | 1     |
| Maryland  |                         | X                        |                     |                                | 1     |
| Massachusetts                                       | X                       | X                        | X                   |                                | 3     |
| Michigan  | X                       |                          |                     | X                              | 2     |
| Minnesota   |                         | X                        |                     |                                | 1     |
| Mississippi   |                         |                          |                     | X                              | 1     |
| Missouri  |                         | X                        | X                   |                                | 2     |
| Montana   | X                       |                          |                     |                                | 1     |
| Nebraska  |                         | X                        | X                   |                                | 2     |
| Nevada  |                         |                          | X                   |                                | 1     |
| New Hampshire                                       |                         |                          | X                   | X                              | 2     |
| New Jersey  |                         | X                        |                     | X                              | 2     |
| New Mexico  |                         | X                        | X                   | X                              | 3     |
| New York  |                         | X                        | X                   | X*                             | 3     |
| North Carolina                                      |                         |                          | X                   |                                | 1     |
| North Dakota  | X*                      | X*                       |                     |                                | 2     |
| Ohio  | X                       | X                        |                     |                                | 2     |

Table 3 (continued).

| Longevity of Time Sensitive Conditions - Dimensions |                         |                          |                     |                                |       |
|---|-------------------------|--------------------------|---------------------|--------------------------------|-------|
| States  | Period of Incarceration | Time Limitations of ASFA | Displacement Period | Remedial Opportunity Timeframe | Total |
| Oklahoma  |                         |                          |                     | X                              | 1     |
| Oregon  |                         | X                        |                     | X                              | 2     |
| Pennsylvania  |                         |                          | X                   | X                              | 2     |
| Rhode Island  |                         |                          | X                   |                                | 1     |
| South Carolina                                      |                         | X                        | X                   | X                              | 3     |
| South Dakota  | X                       |                          | X                   |                                | 2     |
| Tennessee   | X                       | X                        | X                   |                                | 3     |
| Texas   | X                       |                          |                     | X                              | 2     |
| Utah  | X                       |                          |                     | X                              | 2     |
| Vermont   |                         |                          |                     | X                              | 1     |
| Virginia  |                         |                          |                     | X                              | 1     |
| Washington  |                         |                          | X*                  | X                              | 2     |
| West Virginia                                       |                         | X                        |                     |                                | 1     |
| Wisconsin   |                         |                          | X                   | X                              | 2     |
| Wyoming   |                         | X                        | X                   | X                              | 3     |

*Longevity of Time Sensitive Conditions* is a nationally established theme across the 50 states and D.C., having at least 1 dimension evidenced in each state. Notably, 60% of them substantiate two or more of the dimensions while the remainder have only a

single dimension remarkably two of every five states in this case evidence *Time Limitations of ASFA*, as exemplified below.

Alaska: Alaska Stat. §§ 47.10.011; 47.10.080; 47.10.086; 47.10.088: Any of the following may be grounds for termination: The child has been in foster care for 15 of the most recent 22 months, and reasonable efforts to rehabilitate the parent have failed (p. 7).

Maryland: Family Law § 5-525.1: A petition for termination of parental rights shall be filed if: The child has been in an out-of-home placement for 15 of the most recent 22 months (p. 28).

Similarly, another 30% of the state codes identified *Remedial Opportunity Timeframe* as the substantiated dimension.

The legislation of all four dimensions under *Longevity of Time Sensitive Conditions* is explicable for only one state, Iowa. Notably, the substantiation of these dimensions includes a statutory exception vs. a ground, specifically in *Remedial Opportunity Timeframe*. Although identified in only four states (Illinois, Iowa, New Mexico, Oregon), *Remedial Opportunity Timeframe* is the only dimension in this theme to be reflective of both grounds and exceptions. Like Iowa, New Mexico is the only other state to substantiate this dimension solely based on an exception, presented below.

Iowa: Ann. Stat. § 232.111: A petition to terminate parental rights is not required when: The department has documented a compelling reason for determining that termination would not be in the best interests of the child. A compelling reason can include evidence that the family may achieve reunification within 6 months (p. 23).



New Mexico: Ann. Stat. § 32A-4-29: The Children, Youth and Families

Department shall file a motion to terminate parental rights when a child has been in the custody of the department for not less than 15 of the previous 22 months unless: A parent has made substantial progress toward eliminating the problem that caused the child's placement in foster care, it is likely that the child will be able to safely return to the parent's home within 3 months, and the child's return to the parent's home will be in the child's best interests (p. 39).

New York, North Dakota, and Washington revealed dimensions illustrating aggravated circumstances, ceasing the requirement for reasonable efforts. Notably, all four dimensions evidenced aggravated circumstances. As reflected below North Dakota substantiated both *Period of Incarceration* and *Time Limits of ASFA*, while New York indicated *Remedial Opportunity Timeframe* and Washington indicated *Displacement Period*.

North Dakota: Cent. Code §§ 27-20-02; 27-20-44: The court may terminate the parental rights if: The child is subjected to aggravated circumstances.

'Aggravated circumstances' means a parent: Has been incarcerated under a sentence for which the latest release date is: In the case of a child age 9 or older, after the child's majority. In the case of a younger child, after the child is twice the child's current age, measured in days (p. 42).

New York: Soc. Serv. Law §§ 358-a; 384-b: When a court determines that reasonable efforts to reunite the child with his or her parent are not required, a petition to terminate parental rights may be filed immediately. Reasonable efforts shall not be required when: The parent has subjected the child to aggravated circumstances, as defined below.

‘Aggravated circumstances’ means: The parent of a child in foster care has refused and has failed completely, over a period of at least 6 months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect (p. 41).

Washington: Rev. Code §§ 13.34.132; 13.34.180: A court may order termination of parental rights if the following requirements are met: Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following: Abandonment of an infant under age 3 (p. 59).

The extended consideration of the child’s age among the dimensions within *Longevity of Time Sensitive Conditions* is present in 11 states among 3 of the 4 dimensions. The majority of states referenced the child’s age with regard to either the *Displacement Period* (N = 5; Arizona, Iowa, Massachusetts, Washington, Wyoming) or the *Period of Incarceration* (N = 4; Colorado, Florida, North Dakota, Tennessee). Only Mississippi and Vermont referenced the age of the child in conjunction with the *Remedial Opportunity Timeframe*. Variance among the referenced ages and dimensions were taken into account and illustrated below with the statutory grounds for Florida, Tennessee, Iowa, Massachusetts, Wyoming, Mississippi, and Vermont.

#### *Period of Incarceration*

Florida: Ann. Stat. § 39.806: Grounds for the termination of parental rights may be established under any of the following circumstances: The parent is incarcerated and one of the following applies: The time for which the parent is

expected to be incarcerated will constitute a substantial portion of time before the child will attain age 18 (p. 16).

Tennessee: Ann. Code § 36-1-113: Initiation of termination of parental rights may be based upon any of the following grounds: The parent has been incarcerated for 10 or more years, and the child is under age 8 at the time (p. 53).

### *Displacement Period*

Iowa: Ann. Stat. §§ 232.102; 232.111; 232.116: The court may terminate a parent's rights on any of the grounds listed above. The court also may terminate parental rights for any of the following: A child who is age 4 or older has been in out-of-home care for at least 12 of the past 18 months and cannot safely be returned home. A child who is age 3 or younger has been in out-of-home care for at least 6 of the past 12 months and cannot safely be returned home (p.22).

Massachusetts: Ann. Laws Ch. 119, §§ 26, 29C; Ch. 210, § 3: In considering the fitness of the child's parent, the court shall consider, without limitation, the following factors: The child is age 4 or older and has been in an out-of-home placement for at least 12 of the immediately preceding 15 months, and the child cannot be returned home. The child is younger than age 4 and has been in an out-of-home placement for at least 6 of the immediately preceding 12 months and cannot be returned home (p. 28).

Wyoming: Ann. Stat. § 14-2-309: The parent-child legal relationship may be terminated if any one or more of the following facts is established by clear and convincing evidence: The child was abandoned at less than age 1 and has been abandoned for at least 6 months (p. 62).

### *Remedial Opportunity Timeframe*

Mississippi: Ann. Code §§ 43-21-603; 93-15-103: A petition to terminate parental rights shall be filed under one or more of the following circumstances:

The parent has made no contact with a child under the age of 3 years for 6 months or a child 3 years of age or older for a period of 1 year (p. 32).

Vermont: Ann. Stat. Tit. 15A, § 3-504: If any one of the following grounds exists, the court shall order the termination of parental rights: In the case of a child over the age of 6 months at the time the petition is filed, the respondent did not exercise parental responsibility for a period of at least 6 months immediately preceding the filing of the petition. In making a determination under this subdivision, the court shall consider all relevant factors, which may include the respondent's failure to: Regularly communicate or visit with the minor.

During any time the minor was not in the physical custody of the other parent, to manifest an ability and willingness to assume legal and physical custody of the minor (p. 57).

Remarkably, as exemplified above, the North Dakota statutory ground referencing the child's age, not only demonstrates assigned aggravated circumstances, but substantiates the *Period of Incarceration* dimension within this theme.

### *Requisite Criteria*

The third theme is *Requisite Criteria*. Based on the analytic category, *conditional requirements for reunification involving parental participations or overt demonstration of caretaking ability and interest*, there are 4 dimensions to *Requisite Criteria*: (a) *Reasonable Efforts-Permanency Plan*; (b) *Visitation and Contact*; (c) *Ability and Interest*; and (d) *Address Circumstances*. These dimensions incorporate the basic required

conditions for reunification, or so called requisite criteria, referenced in the literature, as well as grounded in the data.

According to research, the failure to meet *Requisite Criteria* is frequently the initiating factor in terminating the rights of an incarcerated parent. *Requisite Criteria* is based on the court's consideration of the basic requirements necessary to achieve reunification. Outlined in the permanency plan to improve the chance for reunification, these basic requirements, or requisite criteria typically include contact, visitation, care-giving interest and ability, involvement and cooperation in reasonable efforts, and remediation of the circumstances. However, from the confines of prison, carrying out these responsibilities and/or demonstrating the desire to do so are met with a myriad of obstacles. The incapacitation of imprisonment severely impedes even the most basic demonstration of motivation, almost eliminating the opportunity for voluntary efforts (Beckerman, 1998; Halperin & Harris, 2004; Seymour, 1998). Likewise, the unyielding confinement also thwarts the ability to initiate healthy and continuous contact, communication, and particularly visitation as the incarcerated parent is dependent on the caseworker to facilitate such interaction (Beckerman, 1998; Bloom & Steinhart, 1993; Christian, 2009; Crossley, 2003; Gentry, 1998; Seymour, 1998).

### *Thematic Question 3: Requisite Criteria*

Research has indicated obstacles inherent to incarceration that hinder the ability of the imprisoned parent to fulfill the prescribed requisite criteria necessary for reunification. To what extent are these basic requisite criteria legislated within the grounds for TPR?

### *Analysis*

The four dimensions to *Requisite Criteria* are evidenced by the following requirements: (a) *Reasonable Efforts-Permanency Plan* - identifying the participation in or outcome of the reunification services, permanency plan, or department's reasonable efforts; (b) *Visitation and Contact* - identifying the participation in or outcome of visitation, contact or communication; (c) *Ability and Interest* - identifying the ability to assume or discharge parental duties-responsibilities, the ability to provide the proper, essential, or adequate care, custody, control, protection and/or necessities or the demonstration of interest, concern and/or commitment; (d) *Address Circumstances* - identifying the effort or progress towards adjusting, remedying, changing, correcting, or improving the circumstances, conditions, conduct or situation; the demonstrated inability or failure to adjust, remedy, change, correct, improve the circumstances, conditions, conduct, or situation; the future inability or likelihood to adjust, remedy, change, correct, or improve the circumstances, conditions, conduct, or situations within the near future, within a reasonable time, in the future, in the foreseeable future, or are likely to continue or continue for an indeterminate period. Notably, the requirements exemplified above are comprehensively descriptive, not exhaustive. As these four dimensions encompass a broad range of actions and circumstances, each statute's grounds were analyzed for these requirements based on the concepts as defined in the literature. The results of this analysis are presented in Table 4.

Table 4

*Requisite Criteria Dimensions in Statutory Grounds by State*

| Requisite Criteria - Dimensions |                                       |                              |                            |                          |       |
|---------------------------------|---------------------------------------|------------------------------|----------------------------|--------------------------|-------|
| States                          | Reasonable Efforts<br>Permanency Plan | Visitation<br>and<br>Contact | Ability<br>and<br>Interest | Address<br>Circumstances | Total |
| Alabama                         | X                                     | X                            | X                          |                          | 3     |
| Alaska                          | X                                     |                              | X                          | X                        | 3     |
| Arizona                         | X                                     |                              | X                          | X                        | 3     |
| Arkansas                        | X                                     | X                            |                            | X*                       | 3     |
| California                      | X                                     | X                            |                            |                          | 2     |
| Colorado                        | X                                     | X                            |                            | X                        | 3     |
| Connecticut                     | X                                     |                              | X                          |                          | 2     |
| Delaware                        |                                       |                              | X                          | X                        | 2     |
| Wash. D.C.                      |                                       |                              |                            |                          | 0     |
| Florida                         | X                                     |                              |                            |                          | 1     |
| Georgia                         | X                                     | X                            | X                          | X                        | 4     |
| Hawaii                          |                                       | X                            | X                          |                          | 2     |
| Idaho                           |                                       |                              | X                          | X                        | 2     |
| Illinois                        |                                       | X                            | X                          |                          | 2     |
| Indiana                         |                                       |                              |                            |                          | 0     |
| Iowa                            | X                                     | X                            |                            |                          | 2     |

Table 4 (continued).

| Requisite Criteria - Dimensions |                                       |                              |                            |                          |       |
|---------------------------------|---------------------------------------|------------------------------|----------------------------|--------------------------|-------|
| States                          | Reasonable Efforts<br>Permanency Plan | Visitation<br>and<br>Contact | Ability<br>and<br>Interest | Address<br>Circumstances | Total |
| Kansas                          | X                                     | X                            | X                          | X                        | 4     |
| Kentucky                        |                                       |                              | X                          | X                        | 2     |
| Louisiana                       | X                                     | X                            | X                          | X                        | 4     |
| Maine                           | X                                     |                              | X                          | X                        | 3     |
| Maryland                        |                                       |                              |                            |                          | 0     |
| Massachusetts                   | X                                     | X                            | X                          | X                        | 4     |
| Michigan                        | X                                     | X                            | X                          | X                        | 4     |
| Minnesota                       | X                                     |                              | X                          | X                        | 3     |
| Mississippi                     | X                                     | X                            |                            |                          | 2     |
| Missouri                        | X                                     |                              |                            |                          | 1     |
| Montana                         | X                                     |                              |                            |                          | 1     |
| Nebraska                        | X                                     |                              |                            |                          | 1     |
| Nevada                          | X                                     | X                            | X                          | X                        | 4     |
| New Hampshire                   | X                                     |                              | X                          | X                        | 3     |
| New Jersey                      | X                                     |                              |                            | X                        | 2     |
| New Mexico                      | X                                     |                              | X                          | X                        | 3     |
| New York                        | X*                                    | X                            |                            |                          | 2     |



Table 4 (continued).

| Requisite Criteria - Dimensions |                                       |                              |                            |                          |       |
|---------------------------------|---------------------------------------|------------------------------|----------------------------|--------------------------|-------|
| States                          | Reasonable Efforts<br>Permanency Plan | Visitation<br>and<br>Contact | Ability<br>and<br>Interest | Address<br>Circumstances | Total |
| North Carolina                  |                                       | X                            | X                          | X                        | 3     |
| North Dakota                    |                                       |                              |                            | X                        | 1     |
| Ohio                            |                                       |                              |                            | X                        | 1     |
| Oklahoma                        |                                       |                              | X                          | X                        | 2     |
| Oregon                          | X                                     | X                            | X                          | X                        | 4     |
| Pennsylvania                    | X                                     |                              | X                          | X                        | 3     |
| Rhode Island                    | X                                     | X                            | X                          |                          | 3     |
| South Carolina                  | X                                     | X                            |                            | X                        | 3     |
| South Dakota                    | X                                     |                              | X                          | X                        | 3     |
| Tennessee                       | X                                     | X                            | X                          | X                        | 4     |
| Texas                           | X                                     |                              | X                          |                          | 2     |
| Utah                            |                                       | X                            | X                          | X                        | 3     |
| Vermont                         |                                       | X                            | X                          |                          | 2     |
| Virginia                        | X                                     | X                            |                            |                          | 2     |
| Washington                      | X                                     | X                            |                            | X                        | 3     |
| West Virginia                   | X                                     |                              |                            |                          | 1     |
| Wisconsin                       | X                                     |                              | X                          |                          | 2     |
| Wyoming                         | X                                     | X                            | X                          | X*                       | 4     |

## Results

As *Requisite Criteria* are set forth prior to every termination and the fulfillment of such is pertinent to reunification, each dimension is evidenced in at least 50% of the state statutes (*Reasonable Efforts-Permanency Plan*, N = 37; *Visitation and Contact*, N = 25; *Ability and Interest*, N = 31; *Address Circumstances*, N = 30). Over 72 % (N = 37) of the states have legislated *Reasonable Efforts-Permanency Plan*. Further of the seven states evidencing only one dimension, five indicated *Reasonable Efforts-Permanency Plan* (Florida, Missouri, Montana, Nebraska, and West Virginia) and are exemplified below.

Missouri: Ann. Stat. § 211.447: A petition to terminate the parental rights shall be filed when: The child has been in out-of-home care for 1 year, and the parent has failed to comply with the terms of a case plan designed to reunify the parent with the child (p. 96).

Montana: Ann. Code §§ 41-3-423; 41-3-609: The court may order a termination of parental rights upon a finding established by clear and convincing evidence that any of the following circumstances exist: Reasonable efforts to rehabilitate the parent have failed (p. 34).

Nebraska: Rev. Stat. § 43-292: The court may terminate all parental rights when the court finds such action to be in the best interests of the child and one or more of the following conditions exist: Reasonable efforts to preserve and reunify the family have failed to rehabilitate the parent (p. 35).

The remaining two of the seven states evidenced *Address Circumstances*, North Dakota, and Ohio as reflected below.

North Dakota: Cent. Code §§ 27-20-02; 27-20-44: The court may terminate the parental rights if: The child is a deprived child, and the court finds: »» The causes of the deprivation are likely to continue and for that reason the child is suffering or will likely suffer serious physical, mental, moral, or emotional harm (p. 42).

Ohio: Rev. Stat. § 2151.414: A court may terminate parental rights if it finds, by clear and convincing evidence, that it is in the best interests of the child and that any of the following apply: The parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home (p. 43).

Further, similar to Kansas, Kentucky, Pennsylvania, and South Dakota, more than three-fifths (N = 31) of the states evidence *Address Circumstances*.

Kansas: Ann. Stat. §§ 38-2269; 38-2271: The court may terminate parental rights when it finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition that makes the parent unable to care properly for a child, and the conduct or condition is unlikely to change in the foreseeable future.

In making a determination of unfitness, the court shall consider, but is not limited to, the following: Lack of effort on the part of the parent to adjust the parent's circumstances, conduct, or conditions to meet the needs of the child (p. 23).

Kentucky: Rev. Stat. § 625.090: In determining the best interests of the child and the existence of a ground for termination, the court shall consider the following factors: The efforts and adjustments the parent has made in his or her circumstances, conduct, or conditions to make it in the child's best interests to return home within a reasonable period of time (p. 25).

Pennsylvania: Cons. Stat. Ch. 23, § 2511: The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

The child has been in an out-of-home placement for at least 6 months, the conditions that led to the placement continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions that led to the removal or placement of the child within a reasonable period of time, and termination of the parental rights would best serve the needs and welfare of the child. The child has been removed from the care of the parent, 12 months or more have elapsed from the date of removal, the conditions that led to the removal continue to exist, and termination of parental rights would best serve the needs and welfare of the child (p. 48).

South Dakota: Ann. Laws §§ 26-8A-26; 26-8A-26.1; 26-8A-27: If it appears at a review hearing that all reasonable efforts have been made to rehabilitate the family, that the conditions that led to the removal of the child still exist, and that there is little likelihood that those conditions will be remedied so the child can be returned to the custody of the child's parents, the court shall affirmatively find that good cause exists for termination of the parental rights of the child's parents, and the court shall enter an order terminating parental rights (p. 52).

The potential for a single ground to substantiate multiple dimensions is exemplified in 23 states. In 19 of the 23 states, one ground is cited, evidencing the dimension of *Address Circumstances* as well as at least one other dimension in this theme. Illustrative of a ground substantiating both *Address Circumstances* and *Reasonable Efforts-Permanency Plan* are New Hampshire, New Jersey, and South

Carolina, while Arizona, Maine, and Utah show grounds substantiating both *Address Circumstances* and *Ability and Interest*.

*Address Circumstances and Reasonable Efforts-Permanency Plan*

New Hampshire: Rev. Stat. §§ 169-C:24-a; 170-C:5: A petition for termination of parental rights shall be filed when any one or more of the following circumstances exist: The parent has failed to correct the conditions leading to the child's out-of-home placement within 12 months, despite reasonable efforts under the direction of the district court to rectify the conditions (p. 37).

New Jersey: Ann. Stat. §§ 30:4C-11.2; 30:4C-15: A petition to terminate parental rights shall be filed when there is evidence of one or more of the following: Reasonable efforts to rehabilitate the parent have been provided for 1 year, and the parent has failed to remedy the conditions that led to the child's out-of-home placement (p. 38).

South Carolina: Ann. Code § 63-7-2570: The family court may order the termination of parental rights upon a finding of one or more of the following grounds and a finding that termination is in the best interests of the child: The child has been removed from the parent, has been out of the home for a period of 6 months following the adoption of a placement plan, and the parent has not remedied the conditions that caused the removal (p. 51).

*Address Circumstances and Ability and Interest*

Arizona: Rev. Stat. § 8-533: The following may also be grounds for termination of parental rights: The child is being cared for in an out-of-home placement, the agency responsible for the child's care has made a diligent effort to provide

appropriate reunification services, and one of the following circumstances exists:

The child has been in an out-of-home placement for a cumulative total period of 15 months, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future (p. 8).

Maine: Ann. Stat. Tit. 22, § 4055: The court may order termination of parental rights if the court finds, based on clear and convincing evidence, that termination is in the best interests of the child, and: The parent is unwilling or unable to protect the child from jeopardy, and these circumstances are unlikely to change within a reasonable time (p. 27).

Utah: Ann. Code §§ 78A-6-507; 78A-6-508: The court may terminate parental rights if it finds any one of the following: The child is being cared for in an out-of-home placement, the parent has substantially neglected or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future (p. 56).

Equally noteworthy, New Mexico is the only state to substantiate three dimensions, *Reasonable Efforts-Permanency Plan, Ability and Interest*, and *Address Circumstances*, with one ground.

New Mexico: Ann. Stat. §§ 32A-4-28; 32A-4-2: The court shall terminate parental rights when: The child has been neglected or abused, and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in

the foreseeable future despite reasonable efforts to assist the parent in adjusting the conditions that render the parent unable to properly care for the child (p. 39).

*Visitation and Contact and Ability and Interest*

Both the parental capability of maintaining a parent-child bond as well as the parental capability of demonstrating the capacity and interest to assume the responsibility of child, have been cited as primary obstacles for incarcerated parents. Thus, indicative of the literature and exemplified below, *Visitation and Contact* was identified in 25 of the statutory grounds, and *Ability and Interest* was evidenced in 31.

*Visitation and Contact*

Alabama: Ala. Code § 12-15-319: If the court finds from clear and convincing evidence that the parents of a child are unable or unwilling to discharge their responsibilities to their child, it may terminate the parental rights of the parents. In making this determination, the court shall consider, but not be limited to, the following: The parent has failed to maintain regular visits with the child in accordance with a visitation plan. The parent has failed to maintain consistent contact or communication with the child (p. 6).

Illinois: Comp. Stat. Ch. 705, § 405/1-2; Ch 750, § 50/1: The grounds of unfitness are any one or more of the following: The parent has failed to maintain regular visitation, contact, or communication with the child for a period of 12 months (p. 20).

New York: Soc. Serv. Law §§ 358-a; 384-b: When a court determines that reasonable efforts to reunite the child with his or her parent are not required, a petition to terminate parental rights may be filed immediately. Reasonable efforts

shall not be required when: An incarcerated parent has failed on more than one occasion to cooperate with efforts to assist the parent to plan for the future of the child or to plan and arrange visits with the child (p. 40).

Oregon: Rev. Stat. §§ 419B.502; 419B.504; 419B.506; 419B.508: The rights of the parent or parents may be terminated if the court finds: The parent has failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child for 6 months. In determining such failure or neglect, the court shall disregard any incidental or minimal expressions of concern or support and shall consider but is not limited to one or more of the following: Failure to maintain regular visitation or other contact with the child that was designed to reunite the child with the parent. Failure to contact or communicate with the child or with the custodian of the child (p. 46).

### *Ability and Interest*

Connecticut: Gen. Stat. §§ 17a-111a; 17a-111b; 17a-112: The Commissioner of Children and Families shall file a petition to terminate parental rights if: The parent has failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the child (p. 13).

Delaware: Ann. Code Tit. 13, § 1103: A procedure to terminate parental rights may also be initiated when it is found that the parent has failed to plan adequately for the child's physical needs or mental and emotional health and development, and one or more of the following conditions are met: In the case of a child in the care of the Department of Services for Children, Youth and Their Families: The parent is incapable of discharging parental responsibilities due to extended or



repeated incarceration. The court finds the parent is incapable of discharging parental responsibilities, and there appears to be little likelihood that the parent will be able to discharge such parental responsibilities in the near future (p. 14).

Michigan: Comp. Laws § 712A.19b: The court may terminate a parent's parental rights if the court finds, by clear and convincing evidence, one or more of the following: The parent is imprisoned for such a period that the child will be deprived of a normal home for more than 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age (p. 30).

Tennessee: Ann. Code § 36-1-113: Initiation of termination of parental rights may be based upon any of the following grounds: The parent has failed to manifest an ability and willingness to assume legal and physical custody of the child (p. 53).

*Requisite Criteria* was legislated in all but three states, District of Columbia, Indiana, and Maryland, indicating the substantiation of this theme in 95% of the statutory grounds. Furthermore, all four dimensions were identified in nine states (Georgia, Kansas, Louisiana, Massachusetts, Michigan, Nevada, Oregon, Tennessee, and Wyoming). Notably exemplified below, of those nine states, six cite a single ground to substantiate two dimensions. While Georgia is the only state evidencing both *Ability and Interest* and *Address Circumstances*, those states substantiating both *Reasonable Efforts-Permanency Plan* and *Address Circumstances* are exemplified by Louisiana, Massachusetts, and Oregon. Likewise, those states substantiating both *Visitation and Contact* and *Address Circumstances* are illustrative of Nevada or Wyoming.

*Ability and Interest and Address Circumstances*

Georgia: Ann. Code §§ 15-11-58; 15-11-94: The court may terminate a parent's parental rights when there is clear and convincing evidence of parental misconduct or inability, and the court finds that such termination is in the best interests of the child. The court by order may terminate the parental rights of a parent with respect to the parent's child if: The child is a deprived child due to the lack of proper parental care or control, the cause of deprivation is likely to continue or will not likely be remedied, and the continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child (p. 17).

*Reasonable Effort-Permanency Plan and Address Circumstances*

Louisiana: Children's Code art. 672.1; 1015: The grounds for termination of parental rights are: Failure of the parent to substantially comply with a case plan for 1 year or more and no reasonable expectation of significant improvement in the parent's condition or conduct in the near future (p. 26).

Massachusetts: Ann. Laws Ch. 119, §§ 26, 29C; Ch. 210, § 3: In determining whether such action is in the best interests of the child, the court shall consider the ability, capacity, fitness, and readiness of the child's parent. In considering the fitness of the child's parent, the court shall consider, without limitation, the following factors: The child has been abused or neglected as a result of the acts or omissions of one or both parents; the parents were offered services and have been unable to make a substantial change in the circumstances that led to the abuse or neglect (p. 28).

Oregon: Rev. Stat. §§ 419B.502; 419B.504; 419B.506; 419B.508: The rights of the parent or parents may be terminated if the court finds: The parent is unfit by reason of conduct or condition seriously detrimental to the child, and integration of the child into the home of the parent is improbable within a reasonable time due to conduct or conditions not likely to change. In determining such conduct and conditions, the court shall consider, but is not limited to, the following: Failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected (p. 46).

*Visitation and Contact and Address Circumstances*

Nevada: Rev. Stat. §§ 128.105; 128.106; 432B.393: The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. The grounds for termination of parental rights include: A finding that the parent has demonstrated at least one of the following: Only token efforts by the parent to support or communicate with the child, to prevent neglect of the child, or to eliminate the risk of serious physical, mental, or emotional injury to the child (p. 36).

Wyoming: Ann. Stat. § 14-2-309: The parent-child legal relationship may be terminated if any one or more of the following facts is established by clear and convincing evidence: The child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one year (p. 62).

*Aggravated Circumstances* was designated to grounds that substantiated a dimension of *Requisite Criteria* in three states. More specifically, in New York the

*Aggravated Circumstance* substantiated *Reasonable Efforts-Permanency Plan*, while Arkansas and Wyoming substantiated *Address Circumstances*.

New York: Soc. Serv. Law §§ 358-a; 384-b: When a court determines that reasonable efforts to reunite the child with his or her parent are not required, a petition to terminate parental rights may be filed immediately. Reasonable efforts shall not be required when: The parent has subjected the child to aggravated circumstances, as defined below.

‘Aggravated circumstances’ means: The parent of a child in foster care has refused and has failed completely, over a period of at least 6 months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect (p. 40).

Arkansas: Ann. Code § 9-27-341: An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence that it is in the best interests of the child, including consideration of one or more of the following grounds: The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to have: Subjected any child to aggravated circumstances.

‘Aggravated circumstances’ means: A child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification (p. 10).

Wyoming: Ann. Stat. § 14-2-309: The parent-child legal relationship may be terminated if any one or more of the following facts is established by clear and

convincing evidence: Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification (p. 62).

### Legislation of Incarceration

The fourth theme is *Legislation of Incarceration*. Based on the statutory characteristics surrounding imprisonment, there are three dimensions to *Legislation of Incarceration*: (a) *Incarceration as a Ground*; (b) *Incarceration within Combined Grounds*; and (c) *Vaguely Defined Conviction*.

As research has found a direct association between parental incarceration and the rise in the foster care population, *Legislation of Incarceration* is based on the vulnerabilities of an incarcerated parent to the termination of parental rights. Literature and case precedent consistently proclaimed incarceration alone does not sever parental rights (Gentry, 1991, 1998; Hayward & DePanfilis, 2007; Johnson & Waldfogel, 2002; Mumola, 2000; Swann & Sylvester, 2006). Illuminating importance of considerations beyond the parent's imprisonment, recent cases reveal an evaluation of parental fitness conducive to incarceration, based on the parent's ability to uphold a relational and parental value to the child. Likewise, states have legislated additional criteria to consider with incarceration, increasing the requisite to substantiate the termination of parental rights. These additional criteria influence the effects of imprisonment on the child and include length of confinement, child's age, quality of the parent-child relationship, pre-incarceration contact with and support of the child, nature of the conviction, likelihood of recidivism, and cooperation with child welfare agency (Allard, 2006; Christian 2009; Gentry, 1991, 1998; Johnson & Waldfogel, 2002).

*Thematic Question 4: Legislation of Incarceration*

As this study focuses on the susceptibility of incarcerated parents to the termination of parental rights based on the statutory grounds, in what manner, if any, do the states address incarceration?

*Analysis*

The four dimensions of *Legislation of Incarceration* are evidenced by the following statutory characteristic: (a) *Incarceration as a Ground* – identifying the conviction and imprisonment for a felony; (b) *Incarceration within Combined Grounds* – identifying incarceration conditioned on the period or duration of incarceration, the child’s age, the current parent-child relationship and/or the extended absence or the period of incarceration’s effect on the relationship, the deprivation of a stable home, the nature of the offense, or the inability or failure to provide proper or adequate care and/or control, to maintain contact and/or communication, or to demonstrate interest and/or concern; (c) *Vaguely Defined Conviction* – identifying criminal conduct or the conviction of a crime or felony, indicating or proving the parental unfitness, or impairing the parent’s ability to provide adequate care.

Notably, as *Incarceration within Combined Grounds* examines incarceration conditioned on additional grounds, these grounds encompasses a broad range of actions and circumstances. Reflective of the dimensions in Themes 1 – 3 (*Judicial Discretion*, *Longevity of Time-Sensitive Conditions* and *Requisite Criteria*), each additional ground was analyzed based on the concepts as defined in the literature. Further, the dimension *Vaguely Defined Conviction*, more specifically, evidences a variation of the root word, unfit. The results of this analysis are presented in Table 5.

## Results

While the specific legislation of incarceration is a fairly recent reaction to the astronomical increase in the U.S. prison population, over 63% (N = 32) of the states evidenced at least one dimension in this theme.

Table 5

### *Legislation of Incarceration Dimensions in Statutory Grounds by State*

| States      | Legislation Of Incarceration - Dimensions   |                                  |                            |       |
|-------------|---|----------------------------------|----------------------------|-------|
|             | Incarceration<br>within Combined<br>Grounds | Vaguely<br>Defined<br>Conviction | Incarceration<br>as Ground | Total |
| Alabama     |   |                                  | X                          | 1     |
| Alaska      | X   |                                  |                            | 1     |
| Arizona     |   | X                                |                            | 1     |
| Arkansas    | X   |                                  |                            | 1     |
| California  |   | X                                |                            | 1     |
| Colorado    | X   |                                  |                            | 1     |
| Connecticut |   |                                  |                            | 0     |
| Delaware    | X   |                                  |                            | 1     |
| Wash. D.C.  |   |                                  |                            | 0     |
| Florida     | X   |                                  |                            | 1     |
| Georgia     | X   |                                  |                            | 1     |
| Hawaii      |   |                                  |                            | 0     |

Table 5 (continued).

| Legislation of Incarceration - Dimensions |   |                                  |                            |       |
|---|---|----------------------------------|----------------------------|-------|
| States                                    | Incarceration<br>within Combined<br>Grounds | Vaguely<br>Defined<br>Conviction | Incarceration<br>as Ground | Total |
| Idaho                                     | X   |                                  |                            | 1     |
| Illinois                                  | X   |                                  |                            | 1     |
| Indiana                                   |   |                                  |                            | 0     |
| Iowa                                      | X   |                                  |                            | 1     |
| Kansas                                    |   |                                  | X                          | 1     |
| Kentucky                                  |   |                                  |                            | 0     |
| Louisiana                                 | X   |                                  |                            | 1     |
| Maine                                     |   |                                  |                            | 0     |
| Maryland                                  |   |                                  |                            | 0     |
| Massachusetts                             | X   |                                  |                            | 1     |
| Michigan                                  | X   |                                  |                            | 1     |
| Minnesota                                 |   |                                  |                            | 0     |
| Mississippi                               |   |                                  |                            | 0     |
| Missouri                                  |   |                                  |                            | 0     |
| Montana                                   | X   |                                  |                            | 1     |
| Nebraska                                  |   |                                  |                            | 0     |
| Nevada                                    |   | X                                |                            | 1     |



Table 5 (continued).

| Legislation of Incarceration - Dimensions |   |                                  |                            |       |
|---|---|----------------------------------|----------------------------|-------|
| States                                    | Incarceration<br>within Combined<br>Grounds | Vaguely<br>Defined<br>Conviction | Incarceration<br>as Ground | Total |
| New Hampshire                             | X   |                                  |                            | 1     |
| New Jersey                                |   |                                  |                            | 0     |
| New Mexico                                |   |                                  |                            | 0     |
| New York                                  | X   |                                  |                            | 1     |
| North Carolina                            |   |                                  |                            | 0     |
| North Dakota                              | X*  |                                  |                            | 1     |
| Ohio                                      | X   |                                  |                            | 1     |
| Oklahoma                                  | X   |                                  |                            | 1     |
| Oregon                                    |   | X                                |                            | 1     |
| Pennsylvania                              |   |                                  |                            | 0     |
| Rhode Island                              | X   |                                  |                            | 1     |
| South Carolina                            |   |                                  |                            | 0     |
| South Dakota                              | X   |                                  |                            | 1     |
| Tennessee                                 | X   |                                  |                            | 1     |
| Texas                                     | X   |                                  |                            | 1     |
| Utah                                      | X   | X                                |                            | 2     |
| Vermont                                   | X   | X                                |                            | 2     |

Table 5 (continued).

| Legislation of Incarceration - Dimensions |   |                                  |                            |       |
|---|---|----------------------------------|----------------------------|-------|
| States                                    | Incarceration<br>within Combined<br>Grounds | Vaguely<br>Defined<br>Conviction | Incarceration<br>as Ground | Total |
| Virginia                                  |   |                                  |                            | 0     |
| Washington                                |   |                                  |                            | 0     |
| West Virginia                             |   |                                  |                            | 0     |
| Wisconsin                                 |   |                                  |                            | 0     |
| Wyoming                                   | X   |                                  |                            | 1     |

*Incarceration as a Ground.* Set forth in the most subjective manner, the legislation of *Incarceration as a Ground* rigidly prescribes negative impact on an incarcerated parent, permitting the immediate termination of parental rights. As exemplified below, this level of negative specificity and influence is evidenced in two states, Alabama, and Kansas.

Alabama: Ala. Code § 12-15-319: If the court finds from clear and convincing evidence that the parents of a child are unable or unwilling to discharge their responsibilities to their child, it may terminate the parental rights of the parents. In making this determination, the court shall consider, but not be limited to, the following: The parent has been convicted of and imprisoned for a felony (p. 6).

Kansas: Ann. Stat. §§ 38-2269; 38-2271: The court may terminate parental rights when it finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition that makes the parent unable to care properly for a child, and the conduct or condition is unlikely to change in the foreseeable future. In making a determination of unfitness, the court shall consider, but is not limited to, the following: Conviction of a felony and imprisonment (p. 23).

*Incarceration within Combined Grounds.* The majority of state codes, (N=25) evidence *Incarceration within Combined Grounds* as exemplified below.

Alaska: Alaska Stat. §§ 47.10.011; 47.10.080; 47.10.086; 47.10.088: Any of the following may be grounds for termination: The parent is unable to discharge his or her parental duties due to: A conviction and incarceration for a felony (p. 7).

Iowa: Ann. Stat. §§ 232.102; 232.111; 232.116: The court may terminate a parent's rights on any of the grounds listed above. The court also may terminate parental rights for any of the following: The parent is incarcerated for a crime against a child or is unlikely to be released from prison for 5 or more years (p. 22).

Louisiana: Children's Code art. 672.1; 1015: The grounds for termination of parental rights are: Incarceration of the parent for an extended period of time, and despite notice by the department, the parent has refused or failed to provide a reasonable plan for the appropriate care of the child other than foster care (p. 26).

Massachusetts: Ann. Laws Ch. 119, §§ 26, 29C; Ch. 210, § 3: In determining whether such action is in the best interests of the child, the court shall consider the ability, capacity, fitness, and readiness of the child's parent. In considering the fitness of the child's parent, the court shall consider, without limitation, the

following factors: The parent has been convicted of a felony that the court finds is of such a nature that the child will be deprived of a stable home for a period of years. Incarceration in and of itself shall not be grounds for termination of parental rights (p. 28).

New York: Soc. Serv. Law §§ 358-a; 384-b: When a court determines that reasonable efforts to reunite the child with his or her parent are not required, a petition to terminate parental rights may be filed immediately. Reasonable efforts shall not be required when: An incarcerated parent has failed on more than one occasion to cooperate with efforts to assist the parent to plan for the future of the child or to plan and arrange visits with the child (p. 40).

Of those state grounds documenting *Incarceration within Combined Grounds*, 17 combinations cited *Longevity of Time-Sensitive Conditions*, theme 2. Variations of the specified time period are presented below.

Arkansas: Ann. Code § 9-27-341: An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence that it is in the best interests of the child, including consideration of one or more of the following grounds: The parent is incarcerated for a period of time that would constitute a substantial period of the child's life (p. 10).

Ohio: Rev. Stat. § 2151.414: A court may terminate parental rights if it finds, by clear and convincing evidence, that it is in the best interests of the child and that any of the following apply: The parent is incarcerated and will not be available to care for the child for at least 18 months (p. 43).

Rhode Island: Gen. Laws § 15-7-7: The court shall terminate any and all legal rights of the parent to the child if it finds as a fact by clear and convincing

evidence that: The parent is unable to discharge his or her parental duties due to: Institutionalization, including imprisonment, of such duration that the parent cannot care for the child for an extended period of time (p. 50).

Texas: Fam. Code §§ 161.001; 161.002(b); 161.007: The court may order termination parental rights if the court finds by clear and convincing evidence that the parent has: Been incarcerated and unable to care for the child for two years (p. 54).

Further, over 50% (N = 9) of the grounds citing *Incarceration within Combined Grounds* paired with *Longevity of Time Sensitive Conditions*, additionally set forth specificity with regard to the child's age. Colorado, Idaho, South Dakota and Tennessee are examples of this specificity.

Colorado: Rev. Stat. § 19-3-604: The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following: The parent has been found to be unfit due to one of the following: Long-term incarceration of the parent of such duration that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected or, if the child is under age six, the parent is not eligible for parole for at least 36 months (p. 12).

Idaho: Idaho Code § 16-2005: The court may grant an order terminating parental rights when it finds that such termination is in the best interests of the child and that one or more of the following conditions exist: The parent has been incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority (p. 19).

South Dakota: Ann. Laws §§ 26-8A-26; 26-8A-26.1; 26-8A-27: In addition, the court may find that good cause exists for termination of parental rights of a parent who: Is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and the child's need for care by an adult (p. 52).

Tennessee: Ann. Code § 36-1-113: Initiation of termination of parental rights may be based upon any of the following grounds: The parent has been incarcerated for ten or more years, and the child is under age eight at the time (p. 53).

Likewise, *Incarceration within Combined Grounds* was also paired with *Ability and Interest*, a dimension under *Requisite Criteria*, in ten state codes. Variations of *Incarceration within Combined Grounds* in combination with *Ability and Interest* are exemplified below.

Delaware: Ann. Code Tit. 13, § 1103: A procedure to terminate parental rights may also be initiated when it is found that the parent has failed to plan adequately for the child's physical needs or mental and emotional health and development, and one or more of the following conditions are met: In the case of a child in the care of the Department of Services for Children, Youth and Their Families: The parent is incapable of discharging parental responsibilities due to extended or repeated incarceration (p. 14).

Georgia: Ann. Code §§ 15-11-58; 15-11-94: The court may terminate a parent's parental rights when there is clear and convincing evidence of parental misconduct or inability, and the court finds that such termination is in the best interests of the child. The court by order may terminate the parental rights of a

parent with respect to the parent's child if: The parent is unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child due to: Incarceration of the parent that has a demonstrable negative effect on the quality of the parent-child relationship (p. 17).

Wyoming: Ann. Stat. § 14-2-309: The parent-child legal relationship may be terminated if any one or more of the following facts is established by clear and convincing evidence: The parent is incarcerated due to the conviction of a felony, and the parent is found unfit to have the custody and control of the child (p. 62).

*Vaguely Defined Conviction.* While *Vaguely Defined Conviction* was identified within six state codes, Arizona, California, Nevada, Oregon, Utah, and Vermont, the discretionary terminology of unfit substantiated five of the six vague definitions. The inclusion of unfit is demonstrated in Arizona, California, Nevada, Utah, and Vermont.

Arizona: Rev. Stat. § 8-533: Grounds to terminate the parent-child relationship shall include any of the following, with due consideration for the best interests of the child: The parent has been convicted of a felony of such nature as to prove the unfitness of that parent, including murder or manslaughter of another child of the parent, or if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years (p. 8).

California: Welf. & Inst. Code §§ 361.5; 366.26: A finding that reunification services shall not be offered, the whereabouts of a parent have been unknown for six months, the parent has failed to visit or contact the child for six months, the parent has been convicted of a felony indicating parental unfitness, or the court has continued to remove the child from the custody of the parent or guardian and

has terminated reunification services, shall constitute a sufficient basis for termination of parental rights (p. 11).

Nevada: Rev. Stat. §§ 128.105; 128.106; 432B.393: In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions that may diminish suitability as a parent: Conviction of the parent for commission of a felony that indicates the unfitness (p. 35).

Utah: Ann. Code §§ 78A-6-507; 78A-6-508: In determining whether a parent is unfit or has neglected a child, the court shall consider, but is not limited to, the following circumstances, conduct, or conditions: Incarceration of the parent for such a time that the child will be deprived of a normal home for more than 1 year

The following circumstances constitute prima facie evidence of unfitness:

Conviction of a crime of such a nature as to indicate the unfitness of the parent to provide adequate care for the child (p. 56).

Vermont: Ann. Stat. Tit. 15A, § 3-504: If any one of the following grounds exists, the court shall order the termination of parental rights: The respondent has been convicted of a crime of violence or has been found by a court of competent jurisdiction to have committed an act of violence that violated a restraining or protective order, and the facts of the crime or violation indicate that the respondent is unfit to maintain a relationship of parent and child with the minor (p. 57).

North Dakota is the only state to assign *Aggravated Circumstances* to the *Legislation of Incarceration*, evidencing *Incarceration within Combined Grounds*.

Noteworthy however is the legislation of three other grounds in addition to incarceration,



*Requisite Criteria's* consideration of the ability and interest of the parent to assume responsibility, as well as *Longevity of Time Sensitive Condition's* specified time periods of incarceration and specified time periods in relation to the child's age. Therefore, although there is the potential to waive reasonable efforts based on a parent's incarceration, incarceration alone will not substantiate the termination.

North Dakota: Cent. Code §§ 27-20-02; 27-20-44: The court may terminate the parental rights if: The child is subjected to aggravated circumstances.

'Aggravated circumstances' means a parent: Has been incarcerated under a sentence for which the latest release date is: In the case of a child age nine or older, after the child's majority. In the case of a younger child, after the child is twice the child's current age, measured in days (p. 42).

Construct: "May" or "Shall" as the Basis for Termination

Potentially influencing the court's discretionary authority and the judge's determination, this construct exemplifies an important distinction between 'may' or 'shall' in the language prefacing the states' basis for termination. Mandating the termination, the term, shall, is legislated through phrases such as shall file a petition, shall be based on, and shall be ordered. The application of "shall" is illustrated in Connecticut, Maryland, and Vermont.

Connecticut: Gen. Stat. §§ 17a-111a; 17a-111b; 17a-112: The Commissioner of Children and Families shall file a petition to terminate parental rights if: (p. 13)

Maryland: Family Law § 5-525: A petition for termination of parental rights shall be filed if: (p. 28)

Vermont: Ann. Stat. Tit. 15A, § 3-504: If any one of the following grounds exists, the court shall order the termination of parental rights: (p. 57)

The legislative intent to mandate termination is also applied to statutes with similar phrases, such as must be, and will be, as reflected in Tennessee and Illinois.

Tennessee: Ann. Code § 36-1-113: Termination of parental rights must be based upon: (p. 53)

Illinois: Comp. Stat. Ch. 750, § 50/1: A petition to TPR will be filed when: (p. 20)

Alternately, a ground may be prefaced by “may terminate”, “may grant an order terminating” or “may order termination” as exemplified in North Carolina, Idaho and Maine.

North Carolina: Rights Gen. Stat. § 7B-111: The court may terminate the parental rights upon a finding of one or more of the following: (p. 41)

Idaho: Idaho Code § 16-2005: The court may grant an order terminating parental rights (p. 19)

Maine: Ann. Stat. Tit. 22, § 4055: The court may order termination of parental rights (p. 28)

Based on the potential of *May or Shall as the Basis for Termination* to influence the four statutory themes impacting incarcerated parents, six circumstances evidenced this distinction: (a) *Shall Terminate*; (b) *May Terminate*; (c) *Shall Terminate and May Terminate*; (d) *May Terminate and Shall Consider*; (e) *May Terminate with 1 Exception*; (f) *May Terminate and Shall Consider with 1 Exception*.

Analytically and statutorily grounded, the six circumstances of *May or Shall as the Basis for Termination* are evidenced by the following variations:

(a) *Shall Terminate* - “shall” is applied to all grounds; (b) *May Terminate* - “may” is applied to all grounds; (c) *Shall Terminate and May Terminate* – “shall” is applied to

certain grounds and “may” is applied to others grounds; (d) *May Terminate and Shall Consider* - “may terminate” and “shall consider” are applied to all grounds; (e) *May Terminate with 1 Exception* - “may” is applied to all grounds with one exception. “Shall” is applied in the *Longevity of Time Sensitive Conditions*’ dimension, *Time limitation of ASFA*; and (f) *May Terminate and Shall Consider with 1 Exception* - “may terminate” and “shall consider” are applied to all grounds with one exception. “Shall” is applied in *Longevity of Time Sensitive Conditions*’ dimension, *Time Limitations of ASFA*.

Notably, the statutes with the circumstance *May Terminate and Shall Consider* indicate the court’s mandatory consideration, in “shall consider”, of the subsequent grounds in the decisions to terminate parental rights and if substantiated, the possibility or allowance of termination, in “may terminate”, at the judge’s discretion. Further, for those circumstances with an exception, *May Terminate with 1 Exception* and *May Terminate and Shall Consider with 1 Exception*, “shall” is singularly applied the ground petitioning the state to terminate parental rights when the child has been in foster care for 15 of the most recent 22 months.

Of the 50 states and the District of Columbia, almost 40%, use *May Terminate* in the statute, allowing termination based on the grounds within the four themes, not mandating it. Conversely, 27% mandate termination for the grounds in all four themes with “Shall Terminate.” Slightly more than 10% of the states allow for termination based on grounds in all four themes with the exception of the 15 month, *Time Limitations of ASFA* in *Longevity of Time Sensitive Conditions*. More specifically, this dimension mandates termination in 40% of the states based on the legislation of “shall,” with 11 of these legislating the consideration of exceptions, mandating termination only if specified exceptions do not apply.

### Construct: Exceptions to the Statutory Grounds

As referenced in *May or Shall as the basis for Termination*, only slightly more than half of the states with ASFA's 15 month termination mandate (N=20) have also legislated the Act's circumstantial exceptions (N=11). Based on the state's ability to legislate and define the exceptions of ASFA, and the subsequent statutory variations, *Exceptions to the Statutory Grounds* evidence five circumstances with the potential to influence an incarcerated parent susceptible to TPR: (a) *Incarceration as an Exception*; (b) *Department Failure of Reasonable Efforts*; (c) *Consideration of the Parent-Child Relationship*; (d) *Child Objects*; (e) *Compelling Reason Termination is not the Child's Best Interest*. These five exceptions have the potential to influence the four statutory themes impacting incarcerated parents.

Grounded in the literature and data, the five circumstances of *Exceptions to the Statutory Grounds* are evidenced by the following statutory variations: (a) *Incarceration as an Exception* – identifying the circumstance of incarceration, as an uncontrollable or unavoidable circumstance within a reasonable period of time, or as a mitigating circumstance to the parent's inability to visit; (b) *Department Failure of Reasonable Efforts* – identifying reasonable efforts are required by the court or law, the department or state agency has not made or provided the services, or failed in reasonable efforts, according to or set forth by the case or permanency plan and/or consistent with the time period allotted in the case or permanency plan, and the services or efforts are necessary for reunification, safe return or preservation of the family; (c) *Consideration of the Parent-Child Relationship* – identifying the closeness and/or positivity of the parent-child relationship, the child's attachment and periods of attachment and/or separation, or the desirability of parental contact; (d) *Child Objects* – identifying the consideration of

child's age and preference to the termination or the child is of a specific age and objects to the termination or adoption; and (e) *Compelling Reason Termination is not the Child's Best Interest* – identifying the court finds or approves, the department finds or has documented, or the permanency plan/case documented, a compelling reason for determining or to believe that filing a petition, such motion or the termination, is not in the best interest of the child or is detrimental to the child, or there is or exists a compelling reason, to determine, to believe, or indicated in the permanency/case plan a petition, such motion, is not in the best interest of the child or is detrimental to the child.

Notably, *Department Failure of Reasonable Efforts* exemplifies the five main considerations of the court, i.e. the requirement, the failure, documentation, and necessity of the duties of the state. These considerations vary among the states, citing the state's failure at minimum. Likewise noteworthy, *Compelling Reason Termination is not the Child's Best Interest* may include a subsequent definition of compelling reasons, prescribing circumstances that may be included but consideration is not limited to. Further, these circumstances have the potential to include *Incarceration as an Exception*, *Department Failure of Reasonable Efforts*, *Consideration of the Parent-Child Relationship*, and *Child Objects*.

*Exceptions to the Statutory Grounds* was identified in 33 states, with over 30% (N = 10) evidencing at least three exceptions (N = 3 in Colorado, Illinois, Massachusetts, Nebraska, New Mexico, Oregon, West Virginia; N = 4 in California, Iowa, and New York). Reflective of ASFA's circumstances for exceptions, nearly 50% of the states substantiated either *Compelling Reason Termination is not in the Child's Best Interest* (N = 23) or *Departmental Failure to Provide Reasonable Efforts* (N = 24). Moreover, both circumstances were legislated in 22 states statutes. These states are Alabama, Alaska,

California, Colorado, Connecticut, District of Columbia, Illinois, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Tennessee, West Virginia, and Wyoming.

*Compelling Reason Termination is not in the Child's Best Interest*

Alabama: Ala. Code § 12-15-317: The Department of Human Resources is required to file a petition for termination of parental rights when the child has been in foster care for 15 of the most recent 22 months unless: The Department of Human Resources has documented in the individualized service plan, which shall be available for review by the juvenile court, a compelling reason for determining that filing a petition would not be in the best interests of the child (p. 6).

Maryland: Family Law § 5-525.1: The Department of Human Services is not required to file a petition for termination of parental rights if: The department has documented in the case plan a compelling reason why termination of parental rights would not be in the child's best interests (p. 28).

New Jersey: Ann. Stat. §§ 30:4C-15; 30:4C-15.3: The Division of Youth and Family Services shall not be required to file a petition seeking the termination of parental rights if: The division has documented in the case plan, which shall be available for court review, a compelling reason for determining that filing the petition would not be in the best interests of the child (p. 38).

Wyoming: Ann. Stat. § 14-3-431: When a child has been placed in foster care under the responsibility of the State for 15 of the most recent 22 months, the State shall file a petition to terminate parental rights unless: The State agency has

documented in the case plan a compelling reason for determining that filing the petition is not in the best interests of the child (p. 62).

*Departmental Failure to Provide Reasonable Efforts*

District of Columbia: Ann. Code § 16-2354: A petition shall be filed when the child has been in court-ordered custody for 15 of the most recent 22 months unless: The District has not offered or provided to the family of the child, consistent with the time period in the case plan, such services as are necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child (p. 15).

Florida: Ann. Stat. § 39.806: A petition may be filed when the parents have substantially failed to comply with a case plan for 9 months unless the failure to comply was due to: A failure of the Department of Children and Family Services to make reasonable efforts to reunify the parent and child (p. 16).

Indiana: Ann. Code § 31-35-2-4.5: A petition to terminate parental rights may be dismissed if: The Department of Child Services has not provided family services to the child, parent, or family of the child in accordance with the case plan, and the period for completion of the program of family services has not expired. The department has not provided family services to the child, parent, or family of the child in accordance with the case plan, and the services that the department has not provided are substantial and material in relation to implementation of a plan to permit safe return of the child to the child's home (p. 17).

North Dakota: Cent. Code § 27-20-20.1: A petition for termination of parental rights need not be filed if: The department has determined: Reasonable efforts to preserve and reunify the family are required under § 27-20-32.2 to be made with

respect to the child. The case plan provides such services as are necessary for the safe return of the child to the child's home. Such services have not been provided consistent with time periods described in the case plan (p. 42).

Compared to the circumstances set forth in ASFA the prevalence of the remaining circumstances decreased, averaging about a 15% across the states and the District of Columbia. *Incarceration as an Exception* is a circumstance in five states as reflected in the examples below.

Colorado: Rev. Stat. § 19-3-604: A petition to terminate parental rights will be filed when the child has been in foster care for 15 of the most recent 22 months unless: The child has been in foster care under the responsibility of the county department for such period of time due to circumstances beyond the control of the parent, such as incarceration of the parent for a reasonable period of time, court delays or continuances that are not attributable to the parent, or such other reasonable circumstances that the court finds are beyond the control of the parent (p. 12).

Nebraska: Rev. Stat. § 43-292.02: A petition shall not be filed to terminate the parental rights of the child's parents if the basis for the petition is that: The parent is incarcerated (p. 35).

Oklahoma: Ann. Stat. Tit. 10A, § 1-4-904: The incarceration of a parent shall not in and of itself be sufficient to deprive a parent of parental rights (p. 44).

Washington: Rev. Code § 13.34.180: The actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's incarceration or service in the military does not in and of itself constitute failure to have contact with the child (p. 59).



*Consideration of the Parent-Child Relationship* is represented in six states as illustrated below.

Iowa: Ann. Stat. § 232.111: The court need not terminate parental rights when: There is clear and convincing evidence that termination would be detrimental to the child due to closeness of the parent-child relationship (p. 22).

Mississippi: Ann. Code § 93-15-103: Legal custody and guardianship by persons other than the parent, as well as other permanent alternatives that end the supervision by the Department of Human Services, should be considered as alternatives to the termination of parental rights, and these alternatives should be selected when, in the best interests of the child, parental contacts are desirable and it is possible to secure such placement without termination of parental rights (p. 32).

New Mexico: Ann. Stat. § 32A-4-29: The Children, Youth and Families Department shall file a motion to terminate parental rights when a child has been in the custody of the department for not less than 15 of the previous 22 months unless: The child has a close and positive relationship with a parent, and a permanent plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child (p. 39).

Likewise, an exception in 7 states, *Child Objects* considers the child's preference in the determination as exemplified below in Maine, Virginia, and Iowa.

Maine: Ann. Stat. Tit. 22, § 4055: In deciding to terminate parental rights, the court shall consider the best interests of the child, the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachments

and separation, the child's ability to integrate into a substitute placement or back into the parent's home, and the child's physical and emotional needs (p. 27).

Virginia: Ann. Code § 16.1-283: Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he or she is age 14 or older or otherwise of an age of discretion as determined by the court, objects to such termination. Residual parental rights of a child age 14 or older may be terminated over the objection of the child if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion (p. 57).

Iowa: Ann. Stat. § 232.111: The court need not terminate parental rights when: The child is over age 10 and objects to the termination (p. 22).

The construct is particularly influential to the statutory themes impacting incarcerated parents in exceptions exemplary of the dimensions substantiating the statutory themes. The exception, *Compelling Reason Termination is not in the Child's Best Interest* is illustrative of this influence. In defining compelling reasons, California and Oregon include circumstances that are also legislated in the statutory grounds, thus substantiating a dimension in a theme. More specifically, California's compelling reason evidences *Requisite Criteria's* dimension, *Visitation and Contact*, while Oregon included the dimension *Permanency Plan-Reasonable Efforts*.

California: Welf. & Inst. Code § 366.26: Parental rights shall not be terminated if: The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: The parents have maintained regular visitation and contact with the child (p. 11).

Oregon: Rev. Stat. § 419B.498: The Department of Human Services shall file a petition to terminate the parental rights of a parent when the child has been in foster care for 15 of the most recent 22 months or there are grounds to terminate unless: There is a compelling reason, which is documented in the case plan, for determining that filing such a petition would not be in the best interests of the child. Such compelling reasons include, but are not limited to: The parent is successfully participating in services that will make it possible for the child to safely return home within a reasonable time (p. 46).

In addition to *Requisite Criteria*, *Longevity of Time Sensitive Conditions*' dimension, *Remedial Opportunity* was identified in Iowa's definition of compelling reasons.

Iowa: Ann. Stat. § 232.111: A petition to terminate parental rights is not required when: The department has documented a compelling reason for determining that termination would not be in the best interests of the child. A compelling reason can include evidence that the family may achieve reunification within six months (p. 22).

#### State and National Level Impact

Composed of the statutory grounds for involuntary termination of parental rights, the four themes and their representative dimensions in this study are supported in literature as obstacles impacting incarcerated parents and grounded in the data. Although each theme incorporates more than one dimension, a theme is established by the substantiation of one dimension.

For this study, undue impact is established by the substantiation of all four themes in a state. Reflecting each of the four themes existence within the statutory grounds for involuntary termination of parental rights by state, Table 6 provides summary

information to answer the research question central to this study: Do the statutory grounds for involuntary termination of parental rights have undue impact on incarcerated parents and their children as a result of the restrictions inherent in incarceration?

The answer is yes. Based on the existence of all four themes, 61% (N = 31) of the 50 states and the District of Columbia's statutory grounds for involuntary termination of parental rights have undue impact on incarcerated parents.

While the state level impact was previously addressed in results for each of the four themes and their individual dimensions, Table 7 comprehensively reflects the impact with the totality of substantiated dimensions in each theme at the state level. With 31 states substantiating undue impact, remarkably of the 20 states which do not, only four are in the western half of the United States, i.e. located west of the Mississippi River. Additionally, of those states (N=23) reflecting at least half of the total dimensions, all but three, New Mexico, South Carolina and Washington, evidence undue impact.

As the majority (N = 31) of the 50 states and the District of Columbia substantiate all four themes in their statutory grounds for involuntary termination of parental rights, an overall undue impact is established at the national level. Furthermore, 94% (N =48) of them evidenced three or more themes impacting incarcerated parents in their statutory grounds, with at least two themes legislated in 100% (N=51) of their statutory grounds. More specifically, *Judicial Discretion* and *Longevity of Time Sensitive Conditions* are included in the statutory grounds for all 50 states and the District of Columbia. Similarly, *Requisite Criteria* was identified in 94% (N=48) of these grounds while 63% (N = 32) of the statutory grounds evidence at least one dimension of *Legislation of Incarceration*. Notably, a mere 6% (N = 3) of states evidence only two themes.

Table 6

*National Level Impact: Themes Evidenced in Statutory Grounds by State*

| States      | Themes              |  |                    |                              | Total |
|-------------|---------------------|--|--------------------|------------------------------|-------|
|             | Judicial Discretion | Longevity of Time Sensitive Conditions | Requisite Criteria | Legislation of Incarceration |       |
| Alabama     | X                   | X                                      | X                  | X                            | 4     |
| Alaska      | X                   | X                                      | X                  | X                            | 4     |
| Arizona     | X                   | X                                      | X                  | X                            | 4     |
| Arkansas    | X                   | X                                      | X                  | X                            | 4     |
| California  | X                   | X                                      | X                  | X                            | 4     |
| Colorado    | X                   | X                                      | X                  | X                            | 4     |
| Connecticut | X                   | X                                      | X                  |                              | 3     |
| Delaware    | X                   | X                                      | X                  | X                            | 4     |
| Wash. D.C.  | X                   | X                                      |                    |                              | 2     |
| Florida     | X                   | X                                      | X                  | X                            | 4     |
| Georgia     | X                   | X                                      | X                  | X                            | 4     |
| Hawaii      | X                   | X                                      | X                  |                              | 3     |
| Idaho       | X                   | X                                      | X                  | X                            | 4     |
| Illinois    | X                   | X                                      | X                  | X                            | 4     |
| Indiana     | X                   | X                                      |                    |                              | 2     |
| Iowa        | X                   | X                                      | X                  | X                            | 4     |

Table 6 (continued).

| States        | Themes              |  |                    |                              | Total |
|---------------|---------------------|--|--------------------|------------------------------|-------|
|               | Judicial Discretion | Longevity of Time Sensitive Conditions | Requisite Criteria | Legislation of Incarceration |       |
| Kansas        | X                   | X                                      | X                  | X                            | 4     |
| Kentucky      | X                   | X                                      | X                  |                              | 3     |
| Louisiana     | X                   | X                                      | X                  | X                            | 4     |
| Maine         | X                   | X                                      | X                  |                              | 3     |
| Maryland      | X                   | X                                      |                    |                              | 2     |
| Massachusetts | X                   | X                                      | X                  | X                            | 4     |
| Michigan      | X                   | X                                      | X                  | X                            | 4     |
| Minnesota     | X                   | X                                      | X                  |                              | 3     |
| Mississippi   | X                   | X                                      | X                  |                              | 3     |
| Missouri      | X                   | X                                      | X                  |                              | 3     |
| Montana       | X                   | X                                      | X                  | X                            | 4     |
| Nebraska      | X                   | X                                      | X                  |                              | 3     |
| Nevada        | X                   | X                                      | X                  | X                            | 4     |
| New Hampshire | X                   | X                                      | X                  | X                            | 4     |
| New Jersey    | X                   | X                                      | X                  |                              | 3     |
| New Mexico    | X                   | X                                      | X                  |                              | 3     |
| New York      | X                   | X                                      | X                  | X                            | 4     |

Table 6 (continued).

| States         | Themes              |  |                    |                              | Total |
|----------------|---------------------|--|--------------------|------------------------------|-------|
|                | Judicial Discretion | Longevity of Time Sensitive Conditions | Requisite Criteria | Legislation of Incarceration |       |
| North Carolina | X                   | X                                      | X                  |                              | 3     |
| North Dakota   | X                   | X                                      | X                  | X                            | 4     |
| Ohio           | X                   | X                                      | X                  | X                            | 4     |
| Oklahoma       | X                   | X                                      | X                  | X                            | 4     |
| Oregon         | X                   | X                                      | X                  | X                            | 4     |
| Pennsylvania   | X                   | X                                      | X                  |                              | 3     |
| Rhode Island   | X                   | X                                      | X                  | X                            | 4     |
| South Carolina | X                   | X                                      | X                  |                              | 3     |
| South Dakota   | X                   | X                                      | X                  | X                            | 4     |
| Tennessee      | X                   | X                                      | X                  | X                            | 4     |
| Texas          | X                   | X                                      | X                  | X                            | 4     |
| Utah           | X                   | X                                      | X                  | X                            | 4     |
| Vermont        | X                   | X                                      | X                  | X                            | 4     |
| Virginia       | X                   | X                                      | X                  |                              | 3     |
| Washington     | X                   | X                                      | X                  |                              | 3     |
| West Virginia  | X                   | X                                      | X                  |                              | 3     |
| Wisconsin      | X                   | X                                      | X                  |                              | 3     |
| Wyoming        | X                   | X                                      | X                  | X                            | 4     |

Table 7

*State Level Impact: Dimensions by Theme Evidenced in Statutory Grounds by State*

| Dimensions By Theme |                     |  |                    |                              |
|---------------------|---------------------|--|--------------------|------------------------------|
| States              | Judicial Discretion | Longevity of Time Sensitive Conditions | Requisite Criteria | Legislation of Incarceration |
| Alabama             | 2                   | 1                                      | 3                  | 1                            |
| Alaska              | 2                   | 1                                      | 3                  | 1                            |
| Arizona             | 4                   | 2                                      | 3                  | 1                            |
| Arkansas            | 4                   | 2                                      | 3                  | 1                            |
| California          | 3                   | 1                                      | 2                  | 1                            |
| Colorado            | 4                   | 2                                      | 3                  | 1                            |
| Connecticut         | 1                   | 2                                      | 2                  | 0                            |
| Delaware            | 3                   | 2                                      | 2                  | 1                            |
| Wash. D.C.          | 2                   | 1                                      | 0                  | 0                            |
| Florida             | 3                   | 2                                      | 1                  | 1                            |
| Georgia             | 3                   | 1                                      | 4                  | 1                            |
| Hawaii              | 2                   | 1                                      | 2                  | 0                            |
| Idaho               | 2                   | 1                                      | 2                  | 1                            |
| Illinois            | 3                   | 2                                      | 2                  | 1                            |
| Indiana             | 1                   | 1                                      | 0                  | 0                            |
| Iowa                | 2                   | 3                                      | 2                  | 1                            |



Table 7 (continued).

| Dimensions By Theme |                     |  |                    |                              |
|---------------------|---------------------|--|--------------------|------------------------------|
| States              | Judicial Discretion | Longevity of Time Sensitive Conditions | Requisite Criteria | Legislation of Incarceration |
| Kansas              | 3                   | 2                                      | 4                  | 1                            |
| Kentucky            | 3                   | 3                                      | 2                  | 0                            |
| Louisiana           | 2                   | 2                                      | 4                  | 1                            |
| Maine               | 2                   | 1                                      | 3                  | 0                            |
| Maryland            | 1                   | 1                                      | 0                  | 0                            |
| Massachusetts       | 4                   | 3                                      | 4                  | 1                            |
| Michigan            | 1                   | 2                                      | 4                  | 1                            |
| Minnesota           | 3                   | 1                                      | 3                  | 0                            |
| Mississippi         | 2                   | 1                                      | 2                  | 0                            |
| Missouri            | 2                   | 2                                      | 1                  | 0                            |
| Montana             | 4                   | 1                                      | 1                  | 1                            |
| Nebraska            | 4                   | 2                                      | 1                  | 0                            |
| Nevada              | 4                   | 1                                      | 4                  | 1                            |
| New Hampshire       | 2                   | 2                                      | 3                  | 1                            |
| New Jersey          | 2                   | 2                                      | 2                  | 0                            |
| New Mexico          | 2                   | 3                                      | 3                  | 0                            |
| New York            | 2                   | 3                                      | 2                  | 1                            |

Table 7 (continued).

| Dimensions By Theme |                     |  |                    |                              |
|---------------------|---------------------|--|--------------------|------------------------------|
| States              | Judicial Discretion | Longevity of Time Sensitive Conditions | Requisite Criteria | Legislation of Incarceration |
| North Carolina      | 2                   | 1                                      | 3                  | 0                            |
| North Dakota        | 1                   | 2                                      | 1                  | 1                            |
| Ohio                | 3                   | 2                                      | 1                  | 1                            |
| Oklahoma            | 2                   | 1                                      | 2                  | 1                            |
| Oregon              | 3                   | 2                                      | 4                  | 1                            |
| Pennsylvania        | 1                   | 2                                      | 3                  | 0                            |
| Rhode Island        | 2                   | 1                                      | 3                  | 1                            |
| South Carolina      | 3                   | 3                                      | 3                  | 0                            |
| South Dakota        | 2                   | 2                                      | 3                  | 1                            |
| Tennessee           | 3                   | 3                                      | 4                  | 1                            |
| Texas               | 1                   | 2                                      | 2                  | 1                            |
| Utah                | 3                   | 2                                      | 3                  | 2                            |
| Vermont             | 1                   | 1                                      | 2                  | 2                            |
| Virginia            | 1                   | 1                                      | 2                  | 0                            |
| Washington          | 3                   | 2                                      | 3                  | 0                            |
| West Virginia       | 2                   | 1                                      | 1                  | 0                            |
| Wisconsin           | 1                   | 2                                      | 2                  | 0                            |

Table 7 (continued).

| Dimensions By Theme |                        |  |                       |                                 |
|---------------------|------------------------|--|-----------------------|---------------------------------|
| States              | Judicial<br>Discretion | Longevity of<br>Time Sensitive<br>Conditions | Requisite<br>Criteria | Legislation of<br>Incarceration |
| Wyoming             | 3                      | 3  | 4                     | 1                               |

## CHAPTER V

### DISCUSSION AND CONCLUSION

#### Discussion of Results

Based on an examination of the statutory grounds for involuntary termination of parental rights and cases involving incarcerated parents, Gentry (1991) found an inadequacy among the states to adjust to the phenomenon of incarceration at that time. Twenty years later, the more moderate consideration of incarceration remains insufficient. More specifically, this study found the majority of the states' statutory grounds have undue impact on incarcerated parents.

Little research has been done in the past two decades on the impact of incarceration upon the involuntary termination of parental rights. Focusing on the procedural due process rights of incarcerated parents, Gentry's (1991) statutory review revealed three topics of concern in the termination of parental rights. Similarly based on statutory grounds, this research addresses the susceptibility of incarcerated parents to the termination of parental rights. The results of this analysis are comparable to the 1991 results, serving to confirm and update the topics of concern. Further, the 1997 legislation of ASFA and the elapse of 20 years, evidence a national stalemate to incorporate the increased interaction in between the prison and foster care populations in legislation.

As incarceration alone does not terminate parental rights, the evaluation of so called parental unfitness should not define or be defined by incarceration. Consistently finding incarceration associated with the word unfitness, Gentry (1991) argues the need for a constitutional standard of parental unfitness conducive to incarceration. He bases this concern for procedural due process on the legislation of unfitness in statutes defining the nature of the crime (Arizona, California, Illinois, Nevada) and ability to discharge

responsibilities (Mississippi, Missouri, Montana). Six years later, Gentry's (1991) concern for incarcerated parent's vulnerability to parental unfitness was exacerbated by ASFA. In the pursuit of permanency, the provisions of the Act have strengthened the state courts' discretionary power, specifically in determining parental unfitness and the child's best interest.

In 2005, Barone and colleagues (2005) and Friedelbaum (2005) proposed a technique for determining the fitness of a parent. The evaluation considered five ambiguous areas of consideration. The individual sufficiency of cognitive functioning, emotional functioning and behavioral history are evaluated and then comprehensively applied in determining the ability of the parent to effectively raise a child. The final consideration is determined by the parent's demonstrated motivation to maintain a parent-child relationship (Barone, Weitz, & Witt, 2005; Friedelbaum, 2005). Conflicting with Gentry's (1991) initial concern, these five areas of evaluation, presented by Barone and colleagues (2005) and Friedelbaum (2005), are fraught with underlying conditions impeded by the prison environment, facilitating an incarcerated parent's termination of parental rights. In a second concern, Gentry (1991) posits the most critical consideration for a parent in prison is the extent of his or her rehabilitation. Again, while contradictory, the 2005 proposal evaluated the parent's behavioral history, absent consideration of rehabilitation. Furthermore, in determining the parent's ability to effectively raise a child, the behavioral history is again taken into consideration.

Two decades after the 1991 examination of the statutory grounds, incarceration continues to be used as a proxy for a finding of unfitness. Having this association legislated in 1991, Arizona, California, and Nevada remain unique statutes. *Vaguely Defined Conviction*, in the statutory theme, *Legislation of Incarceration*, reveals

additional states to define the nature of the crime with unfit. Likewise, unfit also defines an incarcerated parent's ability to fulfill responsibilities, as is the case in Vermont which equates incarceration with unfitness to maintain a relationship. Absent incarceration, the ability to discharge parental duties is further illustrated in *Judicial Discretion's Unfit* where for example, the word unfit characterizes a parent's inability to provide sufficient care in Montana. Post 1997, illustrative of the 1991 and 2005 discrepancies, the evaluation of parental unfitness is still vaguely defined and unfavorable to incarcerated parents.

Advocating the rehabilitation of an incarcerated parent during their imprisonment, Gentry (1991) found the child welfare agencies duty to facilitate rehabilitation services to an incarcerated parent varies among the states. Likewise, the court's level of recognition in the ability of an incarcerated parent to be rehabilitated is inconsistent. Incorporating the status of the parent-child relationship, Gentry (1991) reviewed the statutory grounds for legislation of rehabilitation. As in 1991, the most recent state grounds address rehabilitations efforts and the parent-child relationship. Demonstrating variations in rehabilitative perspectives, an increase in the quality parental relationship, and time constraints of ASFA, the themes and constructs of this research illustrate the current complexities and considerations of rehabilitation for an incarcerated parent.

Twenty years ago there was minimal recognition of the relationship status between a parent and child. Currently, the states' have notably increased the consideration and significance of this bond. Within these grounds, the states address the quality of the relationship with regard to the child. As Georgia considers incarceration's negative impact on quality or Florida determines the potential harm to the child in the continued relationship, *Incarceration within Combined Grounds* evidences the parent-

child relationship as a detriment to the child. Absent incarceration, other statutes, such as New Mexico's and Mississippi's, address this relationship similarly. As *Exceptions to the Statutory Grounds*, Maine and New Mexico illustrate the close or favorable attachment, although not specifying incarceration.

Focusing on procedural due process rights, Gentry (1991) considers an incarcerated parent's rehabilitation based on the state's requirement or duty to provide such services. In determining the susceptibility of incarcerated parents to the termination of parental rights, this study considers the statutory requirements to achieve rehabilitation based on the basic requisite criteria within a case plan. More specifically, Gentry examined only those statutes that addressed incarceration and the duty of the state, while the current study examines any requirements for reunification that have the potential to be inhibited by incarceration. Comprehensively, the most recent statutes legislate both aspects of rehabilitation.

Encompassing the states' concern for rehabilitation, *Requisite Criteria* is found in almost every state's statutes with *Reasonable Efforts-Permanency Plan*, *Visitation and Contact*, *Ability and Interest*, and *Addressed Circumstances* substantiating this study's identification of requirements for reunification. For incarcerated parents, these requirements are impeded by the realities of incarceration. Mandating strict timeframes to achieve these requirements, provisions of ASFA exacerbated the incapacitation of prison, causing *Requisite Criteria* to facilitate the termination of a parent in prison rights.

For incarcerated parents, the most current and frequent vulnerability to the termination of parental rights is the non-negotiable period of absence. In 1991, the duration of incarceration within a statute posed the highest risk to parents in prison.

Based on statutes and cases, Gentry (1991) found nineteen states to facilitate the termination of parental rights based on the incarceration period of the parent.

As incarceration periods within statutes place restrictions on a parents stay in prison, states have conversely addressed timeframes on a child's stay in foster care. Legislating a maximum time period for placement, like incarceration periods, states' permit the termination of parental rights when the allotted duration is exceeded. Absent incarceration, Gentry found these statutes to similarly influence a parent in prison allowing for termination based on an exceeded time period. Gentry (1991) also cautions the termination of parental rights based solely on this period of separation, arguing the parental motivation and interest in the care and custody of the child should be weighted along with their absence due to incarceration. In 1991, Gentry found the vulnerability of an incarcerated parent was highest in nearly half of the states due to legislated time periods. In 1997, ASFA's mandate to petition to terminate parental rights after a child has been in foster care for 15 of the most recent 22 months increased the vulnerability of incarcerated parents to the national level.

Two decades later, the results of this study indicate periods of incarceration as well as periods of child's displacement remain in the most recent statutory grounds for involuntary termination of parental rights, in addition to the 15 month mandate of ASFA since 1997. *Longevity of Time Sensitive Conditions* illustrates the influence of time periods on parents in prison. Evidencing *Incarceration Periods*, *Displacement Periods* and *Time Limitations of ASFA*, *Longevity of Time Sensitive Conditions* is one of the two statutory themes substantiated in all 50 states and Washington D. C. As in 1991, Colorado and Iowa demonstrate periods of incarceration in the recent statutes. Colorado identifies parole eligibility and the child's age in defining length of incarceration whereas



North Dakota's incarceration period considers the latest release date and child's age, specifically measured in days. While there is some consistency in *Time Limitations of ASFA*, the time frames in *Displacement Period* vary, ranging from six months in South Carolina to a collective period of two years or more in Kansas. States have further defined *Displacement Period* based on the child's age. In addition to specific periods and absent the term unfit, Gentry's (1991) examination discovered loosely defined periods of incarceration. This practice continues. As in 1991, Arizona, for example, continues to define the extent of incarceration based on how long the child will be without a normal home. Likewise, South Dakota references a parent's incarceration and the period of unavailability to care for the child with consideration for the child's age and requirement for adult care.

#### Progressive Efforts

Between 1991 and 2007, the number of children with incarcerated parents increased by more than 80%. By 1999, the child welfare system had more than doubled their encounters with this population (Mumola, 2000; Nickel et al., 2009; Swann & Sylvester, 2006). As the myriad of complex circumstances surrounding incarceration and foster care debilitate the parent-child relationship, the likelihood of legal severance between an incarcerated parent and their child is exacerbated. Despite the nation's mounting prison population for the past three decades, the growing interaction between the prison and foster care populations has received minimal attention.

Based on the statutory grounds for involuntary termination of parental rights, the current study illustrates the susceptibility of incarcerated parents to the termination of parental rights. In recent years, states have made strides to consider this unique population in legislation. With the potential to off set incarceration as a basis for the

termination of parental rights, a number of states have legislated specific exceptions to the statutory grounds. As Maine and New Mexico have included consideration of the separation periods or level of attachment between the parent and child, these exceptions reevaluate conditions, assumed to be disrupted by incarceration. Alternately, Colorado justifies a child's extended stay in foster care for circumstances including parental incarceration. Similarly, Oklahoma and Nebraska provide an exception for incarceration in and of itself while Massachusetts specifies this in the statutory grounds. As the majority of the state's statutory grounds continue to have undue impact on incarcerated parents, the findings of this research reiterate the importance of these efforts.

For a parent in prison with a child in foster care, the termination of parental rights is a result of a multi-step, inter-agency process, dependent on three overloaded systems: correctional, courts, and child welfare. Facilitating the possibility of reunification for an incarcerated parent is both inconvenient, and time-consuming. It is here incarcerated parents and their children fall through the cracks of the systems and most of the obstacles are exacerbated. A review of the literature illustrates this array of hindrances, which can diminish an incarcerated parent's potential for reunification. Already vulnerable to judicial language and the nationally legislated time frames, the inclusion of these obstacles in the statutory grounds further facilitates the termination of an incarcerated parent's parental rights. In efforts to reduce the susceptibility of incarcerated parents, addressing these obstacles at the forefront of the process has the potential to counteract unwavering impact in the statutory grounds. Recent efforts at the state and national levels promote opportunities to overcome these obstacles sooner rather than never.

Promoting Safe and Stable Families Amendments of 2001 was the national reorganization of the complexities surrounding prisoners as parents. Extending the

Promoting Safe and Stable Families (PSSF) programs through 2006, this law added programs for youth that age out of foster care as well as children of incarcerated parents. Focusing on mentoring programs and services for children with incarcerated parents, 67 million dollars were allocated for operation and expansion (P.L. 107-133). Through the national promotion of this issue's severity, the legislation facilitated state-level opportunities to address the vulnerability of this population

Recognizing the vulnerability of incarcerated parents continued custody of their children, several states have created multi-organization committees to improve collaboration between state agencies and propose strategies for beneficial practices and procedures. As in Washington, states have further commissioned reports to provide a better understanding of the myriad of circumstances surrounding incarcerated parents and their children, producing more effective services, support and policies.

Likewise, progressive efforts at the state level have focused on the forefront of the process. To compensate for the harsh atmosphere of correctional facilities, Kansas Department of Corrections' remodeled visitations areas to be more child-friendly with colorful walls, toys and books. To facilitate an intimate and positive visiting experience, partitions were added to certain areas for privacy. Kansas, like several other states have also encouraged parental participation in parenting classes, rewarding inmates with all-day visitation opportunities. States have also joined community service providers to assist in this parent-child visitation, like Rhode Island Department of Correction's collaboration with Comprehensive Community Action program (C-CAP) that provides visitation programs throughout the state. Most remarkably, programs like Washington's Residential Parenting Program and Ohio's Achieving Baby Care Success have created programs allowing incarcerated mothers to remain in custody of infant children and care for them

within the correctional facility. These programs include classes on birthing, counseling, and array of courses on child-rearing and family planning to improve the mother's potential for success after release.

### Recommendations and Conclusion

Based on the most recent (2010) statutory grounds for involuntary termination of parental rights, this research establishes the likelihood of incarcerated parents to have their rights terminated at the state and national levels. Although some advancement has been made, the susceptibility of this population to the termination of parental rights parallels the research of Gentry (1991). In 1991, the states were found unable to sufficiently adjust to the increasing population of incarcerated parents. After two decades, the state's inability to adjust has become the states' failure to address this vulnerable population illustrating the need for action.

Now aware of the enormity of this population and the surrounding complexities, this change in perception presents the opportunity to reinforce plausible recommendations set forth during in the early stages of the population's interaction. First, the continued legislation of unfitness bolsters Gentry's (1991) argument for a standardized evaluation of parental fitness conducive to the circumstances of incarceration. Secondly, the continued prevalence of unyielding time constraints (Longevity of Time-Sensitive Conditions) within the statutory grounds, evokes consideration of Gentry's (1991) third concern, cautioning the termination of parental rights based solely on a time-period. Reevaluating the weight of consideration on the legislated time periods against the incarcerated parent's ability and interest in the care and responsibility of the child has the potential to offset one of the most unwavering aspects of an imprisoned parent's vulnerability. Although obstructive to incarcerated

parents in more ways than one, the post-1991 implementation of ASFA, as one of the principal provisions, has facilitated an unrecognized opportunity to consider circumstances of incarceration within the statutory grounds. As a recommendation of the current research, the Act allows for the legislation of exceptions to the statutory grounds as defined by the state. Specifically, the consideration of circumstances impeded by incarceration, the conditional extension on restrictive timeframes, or specifically addressing incarceration itself increases the potential for reunification between an incarcerated parent and their child. Promoting the complexities surrounding incarcerated parents and their children and progressive efforts for consideration is critical to advance legislative development.

While the statutory grounds hold the key to unlocking the susceptibility of incarcerated parents; state level policies, programs, practices and protocols have the potential to minimize obstacles faced at the fore front of the process. There are a myriad of complexities surrounding the incarcerated parents and the foster care system. Additionally there are overburdened systems within interacting agencies and many circumstances conducive to procedural malfunction. The findings of the current research reveal the importance of collaboration, cooperation, and accountability among the agencies. A multi-agency committee is recommended to allow varying perspectives, knowledge, and information to facilitate the opportunity to overcome and address the complexities of this unique population. The committee could incorporate youth court administrators, case workers, correctional officers, employee of the mental health fields, law enforcement, and community services organizations. To ensure participation, funding and professionalism, this research further recommends the inclusion of grant

administrators or writers, as well as respected leaders both within the cooperating agencies as well as outside.

As a second recommendation to the multi-agency collaboration, the development of a liaison position between the child welfare agency and correctional institutions within the state allows for documentation and tracking of interaction between the parent and case worker. As a full-time grant, funded position it has the potential to alleviate prison officials of outside responsibilities. Further, this position would coordinate transportation, ensure availability of communication, provide in-facility and outside rehabilitation opportunities and parenting improvement classes.

Thirdly, directed toward child welfare agencies and policy makers, the current research suggests the development of specific permanency plan requirements for incarcerated parents. Balancing the efforts and participation of the parent with the restrictions of prison, the plan should address areas impeded by incarceration, including notification requirements for important information, such as court hearings, as well as defined visitation and contact requirements. Further, to ensure opportunity and availability, the permanency plan should include documentation for each requirement, signed by all participating parties, and presented to the judges for consideration (court requested). More specifically, for example, to ensure visitation and contact for incarcerated parents, the court requested documentation should be held at the correctional institute by a liaison to the child welfare agency or correctional facility thus requiring travel to the destination.

Promoting the complexities surrounding incarcerated parents and their children, as well as the implementation and success of progressive efforts both statutorily and throughout the process is critical to counteract the susceptibility of incarcerated parents to

the involuntary termination of parental rights. As the efforts to address the population are in their early stages and parallel a deinstitutionalization of prisons, the future of this research is indispensable. More specifically, as the correctional focus moves away from sentence lengths, the effects on the termination of parental rights rates among incarcerated parents deserve consideration. Further, as the current study does not account for case-specifics circumstances, exercise of discretion or judicial determinations, an investigative study of cases involving the termination of parental rights and incarcerated parents has the potential to reveal varying applications of the statutory grounds and exceptions. Lastly, as the termination of parental rights has been linked to the potential opportunity for adoption, a comparison among the termination rates and adoption rates at both the state and national level will reveal the failure or success of the 1997 Adoption and Safe Families Act.

For a parent in prison with a child in foster care, the termination of parental rights has the potential to be solely based on the failure of three overloaded systems: correctional, judicial courts, and child welfare. Debilitating the potential for reunification, it is here that incarcerated parents and their children fall through the cracks of the system as an under-researched population with unique challenges. Based the findings of the current study, the statutory grounds facilitate the involuntary termination of parental rights for incarcerated parents and their children. With the potential for reunification to reduce parental recidivism rates and the likelihood of an incarcerated parent's child to remain in foster care until the age of 18, unwarranted severing of this parent-child bond will do nothing more than sink the already drowning justice system.

## REFERENCES

- Abrahamson, M. (1983). *Social research methods*. Englewood Cliffs, NJ: Prentice Hall.
- Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, SSAct §422, 94 Stat. 500 (1980).
- Adoption and Safe Families Act of 1997, P.L. 105-89, SSAct § 471, 111 stat. 211 (1997).
- Allard, P. E. (2006). Research to action: Informing policy makers about the needs of mothers and children at risk of separation. *Women & Criminal Justice*, 17, 27-41. doi: 10.1300/J012v17n02\_03.
- Barone, N. M., Weitz, E., Witt, P. H. (2005). Psychological bonding evaluations in termination of parental rights cases. *The Journal of Psychiatry & Law*, 33, 387-411.
- Barry, E. (1985a). Children of prisoners: Punishing the innocent. *Youth Law News*, 6, 12-17.
- Barry, E. (1985b). Reunification difficult for incarcerated parents and their children. *Youth Law News*, 6, 13-17.
- Barry, E., Ginchild, R., & Lee, D. (1995). Legal issues for prisoners with children. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents* (pp. 147-166). New York: Lexington Books.
- Beatty, C. (1997). *Parents in prison: Children in crisis*. Washington, DC: Child Welfare League of America Press.
- Beckerman, A. (1989). Incarcerated mothers and their children in foster care. *Children and Youth Service Review*, 11, 175-183.



- Beckerman, A. (1994). Mothers in prison: Meeting the prerequisite conditions for permanency planning. *Social Work*, 39, 9-14.
- Beckerman, A. (1998). Charting a course: Meeting the challenge of permanency planning for children of incarcerated parents. *Child Welfare*, 77, 513-529.
- Berg, B. L. (2004). *Qualitative research methods for social science* (4th ed.). Boston, MA: Allyn and Bacon.
- Berg, B. L. (2008). *Qualitative research methods for social science* (7th ed.). Boston, MA: Allyn and Bacon.
- Black's Law Dictionary* (9<sup>th</sup> ed.). (2009). St. Paul, MN: West.
- Block, K. J. & Potthast, M. J. (1998). Girl scouts beyond bars: Facilitating parent-child contact in correctional settings. *Child Welfare*, 27, 562-578.
- Bloom, B. (1995). Incarcerated mothers. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents* (pp. 21 – 30). New York: Lexington Books.
- Bloom, B. & Steinhart, D. (1993). *Why punish the children: A reappraisal*. San Francisco: National Council on Crime and Delinquency.
- Bogacki, D. & Weiss, K. J. (2007). Termination of parental rights: Focus on defendants. *The Journal of Psychiatry & Law*, 35, 25-45.
- Celinka, K. & Siegel, J. A. (2010). Mothers in trouble: Coping with actual or pending separation from children due to incarceration. *The Prison Journal*, 20, 1-20.
- Chesney-Lind, M. (1997). *The female offender*. Thousand Oaks, CA: Sage Publications.
- Child Welfare Legislation 2006. (2007). Washington, DC: National Conference of State Legislatures.
- Christian, S. (2009). State child welfare legislation 2006. Washington, DC: National Conference of State Legislatures.

- Clark, J. (1995). The impacts of the prison environment on mothers. *The Prison Journal*, 75, 306-329.
- The Constitution and the family. (1980). *Harvard Law Review*, 93(6), 1156.
- Crossley, W. L. (2003). Defining reasonable efforts: Demystifying the state's burden under federal child protection legislation. *Boston University Public Law Review*, 12, 259-315.
- Dallaire, D. H. (2007). Children with incarcerated mothers: Developmental outcomes, special challenges and recommendations. *Journal of Applied Developmental Psychology*, 28, 15-24.
- Dalley, L. P. (2002). Policy implications relating to inmate mothers and their children: will the past be prologue? *The Prison Journal*, 82, 234-268. doi: 10.1177/0032885502082000205.
- Davis, I. P., Landsverk, J., Newton, R., & Ganger, W. (1996). Parental visiting and foster care reunification. *Children and Youth Services*, 18, 363-382.
- Dicker, S. (2009). *Reversing the odds: Improving outcomes for babies in the child welfare system*. Baltimore, MD: Paul H. Brooks Publishing.
- Dicker, S. & Gordon, E. (2000). Harnessing the hidden influence of the courts to enhance the healthy development of foster care. *Protecting Children*, 16, 36 - 53.
- Firestone, W. A. (1987). Meaning in method: The rhetoric of quantitative and qualitative research. *Educational Researcher*, 16, 16-21.
- Friedelbaum, S. H. (2005). Reassessing family relations law: Issues and inquiries in the state courts. *Albany Law Review*, 68, 225-260.
- Garner, Bryan A. (1995). *Dictionary of modern legal usage* (2<sup>nd</sup> ed.). Oxford, U.K.: Oxford U. Press.

- Garrison, M. (1983). Why terminate parental rights? *Stanford Law Review*, 35, 423-496.
- Gentry, P. M. (1991). Procedural due process rights of incarcerated parents in termination of parental rights proceedings: A fifty state analysis. *Journal of Family Law*, 34, 757-846.
- Gentry, P. M. (1998). Permanency planning in the context of parental incarceration: Legal issues and recommendations. *Child Welfare*, 77, 544-559.
- Gilliard, D. K. & Beck, A. J. (1998). *Prison and jail inmates at midyear 1997* (NCJ 167247). Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Glaze, L. E. & Maruschak, L. M. (2008). *Parents in prison and their minor children* (NCJ 222984). Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Greenfield, L. A. (1992). *Prisons and Prisoners in the United States* (NCJ 137002). Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Greenfield, L. A. & Snell, T. L. (1999). *Women offenders* (NCJ 175688). Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Hagan, J. (2011). *Who are the criminals? The politics of crime policy from the age of Roosevelt to the age of Reagan*. Princeton, NJ : Princeton University Press.
- Hairston, C. F. (1991). Mothers in jail: Parent-child separation and jail visitation. *Affilia*, 6, 9-27.
- Hairston, C. F. (2007). Focus on children with incarcerated parents: An overview of the research literature. Baltimore, MD: Annie E. Casey Foundation.
- Hairston, C. F. (2009) Kinship care when parents are incarcerated: What we know, what we can do. Baltimore, MD: Annie E. Casey Foundation.

- Haley, K. (1977). Mothers behind bars: A look at the parental rights of incarcerated women. *New England Journal on Prison Law*, 4, 141-155.
- Halperin, R. & Harris, J. L. (2004). Parental rights of incarcerated mothers with children in foster care: A policy vacuum. *Feminist Studies*, 30, 339-352.
- Hanlon, T. E, Carswell, S. B., & Rose, M. (2007). Research on the caretaking of children of incarcerated parents: Findings and their service delivery implications. *Children and Youth Services Review*, 29, 348-362.
- Harding, Tracey B. (2001). Involuntary termination of parental rights: Reform is needed. *Brandeis Law Journal*, 39, 895-917.
- Hayward, R. A. & DePanfilis, D. (2007). Foster children with an incarcerated parent: Predictors of reunification. *Children and Youth Services Review*, 29, 1320 – 1334.
- Hegar, R. L. (1983). Foster children's and parent's rights to a family. *Social Service Review*, 57, 429-447.
- Henriques, Z. W. (1982). *Imprisoned mothers and their children: A descriptive and analytical study*. Washington, D.C.: University Press of America.
- Holsti, O. R. (1968). Content Analysis. In G. Lindsay & E. Aronson (Eds.), *The handbook of social psychology* (pp.596-692). Reading, MA: Addison-Wesley.
- Holsti, O. R. (1969). *Content analysis for the social sciences and humanities*. Reading, MA: Addison-Wesley.
- Hort, K. (2001). Is twenty-two months beyond the best interest of the child? AFSA's guidelines for the termination of parental rights. *Fordham Urban Law Journal*, 28, 1879-1921.
- In re Adoption of Sabrina*; 325 Pa. Super. 17,472 A.2d 624, 627 (Super. Ct. 1984).
- In re Termination of Parental Rights to Diana P.*, 694 N. W.2d 344 (2005).

- Johnston, D. (1995a). Effects of parental incarceration. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents* (pp. 59 – 88). New York: Lexington Books.
- Johnston, D. (1995b). Parent-child visitation in jail or prison. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents* (pp. 135 – 143). New York: Lexington Press.
- Johnston, D. (2006). The wrong road: Efforts to understand the effects of parental crime and incarceration. *Criminology & Public Policy*, 5, 703-720. doi: 10.1111/j.1745-9133.2006.00414.x
- Johnston, D. (1995). Incarcerated parents. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents*. (pp. 3 - 20). New York: Lexington Press.
- Johnson, E. I. & Waldfogel, J. (2002). Parental incarceration: Recent trends and implications for child welfare. *Social Service Review*, 76, 460-479.
- Kolbe, R. H. & Burnett, M. S. (1991). Content-analysis research: An examination of applications with directives for improving research reliability and objectivity. *Journal of Consumer Research*, 18, 243-250.
- Larson, A. & Swanson, M. (2008). Identifying children with an incarcerated parent: The child welfare parents. St. Paul, MN.: University of Minnesota Center for Advanced Studies in Child Welfare.
- Late Corp of the Church of Jesus Christ of Latter Day Saints v. United State*, 136 U.S. 1 (1889).
- Laughlin, J. S., Arrigo, B. A., Blevin, K. R., & Coston, C. T. M. (2008). Incarcerated mothers and child visitation: A law, social science, and policy perspective. *Criminal Justice Policy Review*, 19, 215-238. doi: 10.1177/0887403407309039.

- Lee, A. F., Gentry, P. M., & Laver, M. (2005). The impact the adoption and safe families act on children of incarcerated parents. In Solinger, R., Johnson, P. C., Raimon, M. L., Reyonlds, T., Tapia, R. C. (Eds.), *Interrupted life: Experiences of incarcerated women in the united states* (pp. 77 – 82). Berkeley, CA: University of California Press.
- LeFlore, L. & Holston, M. A. (1989). Perceived importance of parenting behaviors as reported by inmate mothers: An exploratory study. *Journal of Offender Counseling Services and Rehabilitation, 14*, 5-21.
- Leonard, E. B. (1983). Judicial decisions and prison reform: The impact of litigation on women prisoners. *Social Problems, 31*, 45-58.
- Lightfoot, E., Hill, K., LaLiberte, T. (2010). The inclusion of disability as a condition for termination of parental rights. *Child Abuse & Neglect, 34*, 927-934.
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. Beverly Hills, CA: Sage Publications.
- Luke, K. R. (2002). Mitigating the ill effects of maternal incarceration on women in prison and their children. *Child Welfare, 81*, 929-948.
- Marcus, S. E. (1995). Child welfare system policies and the children of incarcerated parents. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents*. (pp. 285 – 291). New York: Lexington Press.
- Marsh, J. R. (2005). Recent judicial decisions regarding the adoption and safe families act. *Adoption Quarterly, 4*, 75-88.
- McGowan, B. G. & Blumenthal, K. L. (1978). *Why punish the children?* Haskensack, NJ: National Council on Crime and Juvenile Delinquency.

- Mears, D. P. (2010). *American criminal justice policy: An evaluation approach to increasing accountability and effectiveness*. New York, NY: Cambridge University Press.
- Meyers v. Nebraska*, 262 U.S. 390 (1923).
- Miles, M. & Huberman, A.M. (1994). *Qualitative data analysis* (2<sup>nd</sup> ed.). Thousand Oaks, CA: Sage Publications.
- Moses, M. C. (2006, October). Correlating incarcerated mothers, foster care and mother – child reunification (NIJ update). *Corrections Today Magazine*, 68, 98-101.
- Muhar, G. (1991). Incarceration and termination of parental rights. *Journal of Juvenile Law*, 12, 70 -78.
- Mumola, C. J. (2000). *Incarcerated parents and their children* (NCJ 222984). Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Murray, J. & Farrington, D. P. (2006). Evidence-based programs for children of prisoners. *Criminology & Public Policy*, 5, 721-736. doi: 10.1111/j.1745-9133.2006.00412.x.
- Murray, J. & Farrington, D. (2008). Effects of parental imprisonment on children. *Crime and Justice: A Review of Research*, 37, 133-194.
- Myers, B., Smarsh, T., Amlund-Hagen, K., & Kennon, S. (1999). Children of incarcerated mothers. *Journal of Child and Family Studies*, 8, 11-25.
- New Mexico's Court Improvement Project. (2006). *Child Protection Best Practices Bulletin: Connecting Children with Incarcerated Parents*. Retrieved from <http://www.f2f.ca.gov/res/pdf/ChildProtectionBPBulletins.pdf>.

- Nickel, J., Garland, C., & Kane, L. (2009). Children of incarcerated parents: An action plan for federal policymakers. New York, NY: The Council of State Governments, Justice Center.
- Norman, J. A. (1995). Children of prisoners in foster care. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents* (pp. 124 – 134). New York: Lexington Press.
- Office of Court Improvement. (2008). *Caregiver's Guide to Dependency Court*. Tallahassee, FL: Dependency Court Improvement Program.
- Phillips, S. & Bloom, B. (1998). In whose best interest? The impact of changing public policy on relatives caring for children with incarcerated parents. *Child Welfare*, 17, 531-541.
- Phillips, S. D. & Dettlaff, A. J. (2009). More than parents in prison: The broader overlap between the criminal justice system and child welfare system. *Journal of Public Child Welfare*, 3, 3-22.
- Pratt, T. C. (2009). *Addicted to incarceration: Corrections policy and the politics of misinformation in the United States*. Thousand Oaks, CA: Sage Publications.
- Prima Prevention Partnership. (2007). Arizona Children of Incarcerated Parents Bill of Rights Project: Reports and Recommendations. (2007). AZ: Prima Prevention Partnership.
- Santosky v. Kramer*, 455 U.S. 745 (1982).
- Selltiz C., Jahoda, D., Deutsch, M., & Cook, S. W. (1959). *Research methods in social relations*. New York: Holt, Rinehart & Winston.
- Seymour, C. (1998). Children with parents in prison: Child welfare policy, program, and practices issues. *Child Welfare*, 17, 470-493.



- Shanley, M. L. (Ed.). (2008). The relational right of parent and child: The case of incarcerated parents. Proceedings from 2008: *The Annual Meeting of the American Political Science Association*. Boston, MA.
- Simmons, C. W. (2000). Children of incarcerated parents. *California Research Bureau Notes*, 2, 1-11.
- Skinner, D. A. & Kohler, J. K. (2002). Parental rights in diverse family contexts: Current legal developments. *Family Relations*, 51, 293-300.
- Smith, C. J. & Young, D. S. (2003). The multiple impacts of TANF, ASFA, and mandatory drug sentencing for families affected by maternal incarceration. *Children and Youth Services Review*, 25, 535-552.
- Smith, G. (1995). Practical considerations regarding termination of incarcerated parents' rights. In Gabel, K. & Johnston, D. (Eds.), *Children of incarcerated parents* (pp. 183 - 195). New York, NY: Lexington Press.
- Smith, E. & Elstein, S. G. (1994). *Children on hold: Improving the response to children who parents are arrested and incarcerated*. Washington D.C.: American Bar Association, Center for Children and the Law.
- Snell, T. L. (1994). *Special Report: Women in prison*. (NCJ 145321). Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Sofaer, S. (1999). Qualitative methods: What are they and why use them? *Health Services Research*, 34, 1101-1118.
- Stanley v. Illinois*, 405 U.S. 645, 658 (1972).
- State Agency Survey on Children of Incarcerated Parents*. (1998). Washington DC: Child Welfare League of America.

- Stemler, S. (2001). An overview of content analysis. *Practical Assessment, Research & Evaluation*, 7(17). Retrieved from <http://PAREonline.net>
- Strauss, A. L. (1990). *Qualitative analysis for social scientists* (2<sup>nd</sup> ed.). New York, NY: Cambridge University Press.
- Swann, C. A. & Sylvester, M. S. (2006). The foster care crisis: What caused caseloads to grow? *Demography*, 43, 309-335.
- Taylor, S. J. & Bogdan, R. (1998). *Introduction to qualitative research methods: A guide book and resources* (3<sup>rd</sup> ed.). New York, NY: John Wiley & Sons, Inc.
- Thompson, P. J. & Harm, N. J. (2000). Parenting from prison: helping children and mothers. *Issues in Comprehensive Pediatric Nursing*, 23, 61-81.
- US Department of Health and Human Services: Administration on children, youth and families. (2008). *Child and Family Services Reviews – Onsite Review Instrument and Instruction*.
- US Department of Health and Human Services: Children's Bureau. (Feb 2010). *Grounds for Involuntary Termination of Parental Rights*. Retrieved from [http://www.childwelfare.gov/systemwide/law\\_policies/statutes/groundterminin.cfm](http://www.childwelfare.gov/systemwide/law_policies/statutes/groundterminin.cfm)
- US Department of Justice. (1993). *Survey of state prison inmates, 1991*. (NCJ 136949). Washington, DC: Bureau of Statistics.
- US Department of Justice: Bureau of Justice Statistics. (2000). *Survey of Inmates in State and Federal Correctional Facilities, 1997*. Computer file. Compiled by the US Department of Commerce: Bureau of the Census. ICPSR ed. Ann Arbor, MI: Inter-university Consortium for Political Social Research (producer and distributor).

- Wald, M. S. (1976). State intervention on behalf of “neglected” children: Standards for removal of children from their homes, monitoring the status of children in foster care, and termination of parental rights. *Stanford Law Review*, 28, 623-696.
- Wayne, R. H. (2008). The best interests of the child: A silent standard - will you know it when you hear it? *Journal of Public Child Welfare*, 2, 33-48.
- Weber, R. P. (1990). *Basic content analysis* (2<sup>nd</sup> ed.). Newbury Park, CA: Sage Publications.
- West, H. C. & Sabol, W. J. (2009). *Prison inmates at midyear 2008*. (NCJ 231675). Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Wien, K. (1997). State v. parent termination of parental rights: Contradictory actions by the Ohio legislature and the Ohio Supreme Court in 1996. *Capital University Law Review*, 26, 673-699.
- Wilderman, C. (2009). Parental imprisonment, the prison boom, and the concentration of childhood disadvantage. *Demography*, 46, 265-280.
- Wildeman, C. & Western, B. (2010). Incarceration in fragile families. *The Future of Children*, 20, 157-177.
- Wright, L. & Seymour, C. (2000). *Working with children and families separated by incarceration: A hand book for child welfare agencies*. Washington, DC: CWLA Press.
- Young, D. D. & Smith, C. J. (2000). When moms are incarcerated: The needs of children, mothers, and caregivers. *Families in Society*, 81, 130-141.
- Zubok, M. (2004). Termination of parental rights. *The Georgetown Journal of Gender and the Law*, 5, 587 - 609.

